

2001

State of Utah v. Dejon Ramon Waldron : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH	/	
Plaintiff/Respondent	/	
vs.	/	Case No 20010552-CA
DEJON RAMON WALDRON	/	
Defendant/Appellant	/	Priority # 2

BRIEF OF APPELLANT

This appeal is from the Defendant's conviction by a jury empaneled by the Honorable W. Brent West, of three counts of aggravated robbery, an aggravated assault, aggravated burglary and tampering with evidence. There was insufficient evidence presented to the jury for the jury to find the Defendant guilty of the crimes charged. The Prosecutor committed error in his closing argument by misstating the testimony of one of the victims.

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Plaintiff/Respondent /

vs / Case No 20010552-CA

DEJON RAMON WALDRON / Judge_____

Defendant/Appellant / Priority No 2

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

This appeal is from a conviction by a jury empaneled by the Honorable W. Brent West of one three counts of aggravated robbery, in violation of Section 76-6-302 U. C. A. first degree felonies, one count of aggravated assault in violation of Section 76-5-103(1)(b) UCA, a second degree felony, one count of aggravated burglary in violation of Section 76-6-203 U.C.A., a first degree felony and one

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count of tampering with evidence, in violation of Section 78-8-510 U. C. A., a second degree felony. All the counts, except the tampering with the evidence, also carried a gun enhancement.

The basis of the Defendant's appeal is that there was insufficient evidence presented to the jury for the jury to find beyond a reasonable doubt that the Defendant was the individual who entered the residence at 840 W Ellis in Ogden, Utah with the intent to rob the individuals in the residence. Further, the Prosecutor committed prosecutorial misconduct when, over the objections of the Defendant, in closing argument he stated that one of the victims identified the Defendant as the robber, whereas the testimony of the victim was that he did not know who the assailant was. On May 30, 2001 the Defendant was sentenced to serve four concurrent terms of six years to life in the Utah State prison on the conviction of three counts of robbery and the one count of burglary and on the count of aggravated assault, the term of one year to fifteen years and one year to fifteen years on the conviction of the tampering with the evidence, this sentence to run consecutively to the other sentences. The Defendant was sentenced on the four possible life sentences to four one year terms because of the gun enhancement.

The notice of appeal was filed with the Court on the 29th Day of June,

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2001. The Jurisdiction of this Court is conferred pursuant to U.C.A. Sec 78-2-2(3)(1) Utah Code Annotated.

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

POINT I

Was the evidence presented to the jury sufficient for the jury to find the Defendant guilty beyond a reasonable doubt of the three crimes of with evidence beyond a reasonable doubt of three counts of robbery, one count of aggravated robbery, one count of aggravated assault and one count of tampering with the evidence?

POINT II

Did the Prosecutor commit prosecutorial misconduct when he stated in his rebuttal closing argument that one of the victims had identified the Defendant as the individual who committed the robbery, where the testimony of the victim was that he did not know who the assailant was, because he was immediately hit on the head and was basically out of it during the whole event, and where the Defendant objected to the Prosecutor's statements, that were not corrected by the Court?

STANDARD OF
REVIEW

The question of whether there was sufficient evidence presented to the jury for the jury to find beyond a reasonable doubt that the Defendant was guilty of the crime of assault is a factual question, which the Court reviews for abuse of

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discretion State v. Pena 869 P 2d 994 (Utah 1994) The question of whether the Prosecutor committed prosecutorial misconduct when he selectively quoted only one part of a victim's testimony where he identified the Defendant as the perpetrator but ignored the majority of the victims testimony that he could not identify the perpetrator is a legal question, which the Court reviews for correctness. State v Pena 869 P 2d 994 (Utah 1994)

STATEMENT OF THE CASE

The Defendant was charged by information with three counts of aggravated robbery in violation of Section 76-6-302 UCA, first degree felonies, one count of aggravated assault in violation of Section 76-5-103(1)(b) U. C. A., a second degree felony, one count of aggravated burglary in violation of Section 78-6-203 U. C. A., a first degree felony and one count of tampering with the evidence in violation of Section 78-8-510 U. C. A. a second degree felony. The Defendant was tried on the 23rd, 24th and 26th days of April 2001 before a jury empaneled by the Honorable W. Brent West. The jury found the Defendant guilty of three counts of robbery, first degree felonies, one count of aggravated assault, a second degree felony, one count of aggravated burglary, a first degree felony and one count of tampering with evidence, a second degree felony. All of the convictions,

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other than the tampering with evidence also carried a gun enhancement. On May 30, 2001 the Defendant was sentenced to serve four terms of five years to life on the four first degree felonies, one year to fifteen years on the conviction of aggravated assault, a second degree felony and one year to fifteen years on the count of tampering with evidence. All the counts, except the tampering with the evidence carried a one year gun enhancement to the minimum sentence. All the sentences, except the sentence on the tampering with evidence are to be served concurrent. All sentences are to be served at the Utah State Prison.

The testimony presented to the jury by the State showed that on the evening of September 23, 2000 William Coleman was in his house at 840 West Ellis Street in Ogden, Utah. At approximately 10:00 p. m. he was drinking beer and watching television with his friend Roy, and Mark Jones. At approximately 10:00 p. m. there was a knock at the front door and Mr. Coleman told Mark to answer the door. After Mark answered the door a girl walked in. Immediately following the girl a man walked into the house. The man and Mark had some words about some money. Then the man hit Mark. The man who walked in then pulled a gun and then a shot went off.

All William Coleman remembered about the individual was that he was a big

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man wearing a dark parka. The individual's hair was braided like corn rows. William Coleman offered to pay the individual what Mark owed and pulled out some money, which the man grabbed. The man then hit Roy and eventually there were other shots fired. William Coleman testified that he had never seen the man in his life and did not know his name.

Jimmy Roy Valdez was also in the house. He testified that he knew the owner of the house as Binky. After the man walked into the house he asked Roy if he had any money. When Roy said he was not giving him his money Roy started walking to the door. The man then fired a bullet, which hit Roy in the leg. The man then pointed the gun at Roy's head. Roy grabbed the gun and he and the man started wrestling. Roy then ran out the door and into his own car. When the Prosecutor asked Roy if he remembered what the individual looked like Roy answered, no, he did not.

The third witness to the events was Mark Anthony Jones. He related that approximately 10:00 p. m. a female named Linda knocked at the door at 840 W Ellis Street in Ogden, Utah. Binky asked Mark to answer the door. At that time the female was alone. Mark opened the door and someone else came into the room. Mark testified that he did not know who it was. But as Mark turned to

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watch television he was hit in the head by something. Mark testified he could not remember who hit him because he was pretty dazed. Further Mark testified that he never saw the person who hit him.

When asked to identify the Defendant in Court Mark testified that the Defendant did not look like the same individual he knew last summer. Mark testified that when he knew the Defendant he was known as Little John, D. J. or Dejon. When the officers showed up at the West Ellis house they talked to Mark . Mark testified that he remembered talking to the officers, but does not remember what he said to the officers. Mark further remembered going to the police station, but testified that he did not sign a statement at the police station. Mark also denied making the statement that "if he testified he could not live in Ogden".

However, on cross examination by the State, Mark testified that an offer was made to him to try and help him with his pending legal problems if he testified truthfully. However, when asked about the statement the officers claimed that Mark signed he said he did not remember making a number of statements that were in the statement and that a lot of the items in the statement were flimsy.

At about 10:30 p. m. A witness, Demarkee Jimerson, testified that at approximately 10:30 p.m. the Defendant walked into his house at 1015 Patterson,

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in Ogden, Utah and informed the witness that he had just wrecked his car around the corner from the house. A short time later the Defendant left the house. The witness and his fiancée went to a house in Shadow Valley in Ogden, Utah belonging to Kathy Colunga at the request of the Defendant. There they met the Defendant and a lady named Nina. The police then came to the Shadow Valley house looking for the Defendant.

Shortly after the police came, the Defendant, Nina, the witness and his fiancée left in a white truck. A few minutes later the police stopped the truck and arrested all the occupants. The police found the Defendant behind the seat of the pickup. In arresting the parties, they searched the handbag of the witnesses fiancée and found a gun in her handbag. The fiancée testified that she was given the gun by the witness, who testified that he was given the gun by the Defendant as they left the house.

The Prosecutor in his rebuttal closing argument stated that Mark Anthony Jones had testified that L.J. was Dejon and that L. J. is the one which did the offense. The Defendant objected to the rebuttal closing argument of the Prosecutor as stating things that were not in evidence. The Court did not correct this.

During the jury deliberations the Jury asked if they could have a copy of the

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testimony of Mark Anthony Jones. The Trial Judge, with the approval of the State and the Defendant, denied the request, mainly because it had not been transcribed. The jury found the Defendant guilty on all counts.

FACTS

In the late evening of September 26, 2000 William Coleman, the owner of a house at 840 West Ellis Street , Ogden, Utah was drinking beer and watching television with two of his friends. At approximately 10:00 p. m. Mr. Coleman, also called "Blinky" heard a knock at the door. Blinky asked Mark Anthony Jones to answer the door. In answering the door a girl came into the house. Immediately after the girl came in a man followed her into the house. That man had a gun, but he had not been invited into the house.(T. Vol I P. 60)

The witness, William Coleman, testified that the assailant was wearing dark clothes, including a parka. The assailant's hair was braided in the form of corn rows.(T. Vol I pg's 61-62) The assailant then asked for money, claiming that Mark owed him some money. Blinky offered the assailant the money he had, which the assailant took without either Blinky or the assailant counting the money. The assailant then walked over and hit Roy. The assailant and Roy then started fighting. (T Vol I pg's. 62-63) Blinky went into another room and when he came out of the

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room a few minutes later everyone was gone. (T. Vol I p. 63)

When William Coleman was asked whether he knew the person Mr. Coleman replied: "no, he had never seen him in his life He did not know him and he could be talking to him now and I would not know him". All William Coleman testified to was that he was big and had braids in his hair. (Vol I p. 64) When shown a picture of the Defendant by the Prosecutor the witness said: "If it's him, I don't know – there ain't no black person in here but me. I don't know the man". (T Vol I p. 70)

The next victim to testify was Jimmy Roy Valdez. Roy testified that he was drinking beer and watching television with Blink when he heard a knock on the door. Then he saw a girl come into the house. Someone walked in behind the girl, but Roy testified that he did not get a good look at his face. This person said to Mark "You got my money, and Mark did not have his money, so the assailant fired between Mark's legs. (T. Vol I pg's 100-102)

The assailant then said to Roy, give me all your money. Roy replied:" I ain't giving up my money, you gonna have to shoot me, you know". Roy started walking toward the door. The assailant then fired a shot, which hit Roy in the leg. Roy then ran out of the house bleeding and got into his car. (T. Vol I p. 103)

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When asked if Roy remembered what the assailant looked like, he replied "no I don't" Roy did not remember whether the assailant was dark skinned or not. Also it was kinda dark in the house. (T. Vol 1 p. 106)

The third victim to testify was Mark Anthony Jones. Mark was at William Coleman's house on September 23, 2000 at approximately 10:00 p.m. (T. Vol I pg's 130-131) At that time a girl named Linda knocked on the front door (T. Vol I pg's 132, 134) Mark answered the door and Linda came in. Mark turned his head to watch television. At that time Mark got hit in the head by something. The hit was hard enough to knock him down and daze him. (T Vol I pg's 135-136)

When ask the question of whether there were any of the people he was able to make out, Mark answered:" that he was able to recognize Blinky and Roy, but the person that came in, I didn't know who he was". Further Mark said that trying to recollect what happened, what was actually said, is hard to say. "It's foggy and I'm unclear, I'm unsure". When asked if Mark saw the person, he answered "I didn't see the person". (T. Vol I pg's 136-137)

When Mark was asked if he was familiar with the gentlemen in Court sitting at the table, Mark answered "He doesn't look like I know him when I knew him, but from what I know him by, what his name is, but he doesn't look the same as he does when I know him when he lived by my sister." When Mark was asked if he knew

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the Defendant's name Mark answered that he knew the Defendant by the name of D.J. or Dejon, but never by the name of Little John (T. Vol I pg's 138-139)

Mark was then asked if he owed the Defendant some money. Mark answered that it was a debt, they loaned me some money and it was paid back in another way that I handled some business for him. It was taken care of. (T. Vol I pg's 139-140)

Mark was then asked if he made a statement to the police and answered that he did not sign anything. (T. Vol I. p. 143) The State then asked Mark if he remembered saying : "that if he testified, he couldn't live in Ogden". Mark replied: "that he did not think he said anything like that". (T. Vol I p. 146)

Demarkee Jimerson testified that on the 23rd of September, 2000 he was residing at 1015 Patterson Street in Ogden, Utah. (T Vol I p 196) At approximately 10:30 p. m. Mr. Jimerson did not see anybody at his home. (T Vol I p 197) Sometime during the night the Defendant knocked on Mr. Jimerson's back door. At that time the Defendant appeared cool. (T. Vol I p. 199) Upon entering Mr. Jimerson's house the Defendant told Mr. Jimerson that he had wrecked his car around the corner from Mr. Jimerson's house. Mr Jimerson asked the Defendant to leave as he did not want any trouble at his house. Then the Defendant left Mr. Jimerson's house. (T. Vol I p. 200)

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Later that evening Mr. Jimerson received a telephone call from the Defendant asking him to come to Kathy Colunga's house. (T. Vol I p. 201) A buddy of Mr. Jimerson took him and his fiancé, Antoinette to Kathy's house. Kathy, Nina and the Defendant were there. (T. Vol I p. 203) The Defendant was downstairs in the finished basement. The Defendant said he needed to leave. (T. Vol I p. 204) After Mr. Jimerson was there about ten minutes, the police came to the door. The police asked if the Defendant was there. (T. Vol I p. 205) When the police did not locate the Defendant there they left. (T. Vol I p 207)

After the police left, the Defendant, Mr. Jimerson, his fiancé and Nina left in a white pickup truck. The Defendant was in the back and the other three were in the front seat, with Nina driving. (T. Vol I p. 208) Mr. Jimerson testified that he never saw the Defendant conceal himself. Shortly after the truck left Kathy Colunga's house they were pulled over by the police. (T. Vol I p. 209)

Mr. Jimerson was asked if the Defendant took anything out of Kathy's house. Mr. Jimerson answered that the Defendant had handed him a gun to give to his fiancé. (T. Vol I p. 211) After the police search the occupants and the vehicle they found the gun in the fiancé's purse. (T. Vol I p 214) Detective Tony Hansen of the Ogden City Police Department testified that the police never conducted a test of the Defendant's hands to determine if there was gunpowder residue on his hands.

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(T. Vol II p. 207)

In discussing potential instructions to the jury the Court proposed a instruction. A objection was made to the instruction which said that a written statement and written depositions are just as effective whether they're written as whether or not the person took the stand. The State objected to the instruction confusing and saying a written statement by a individual not testifying should not have the same weight as the testimony of an individual. (T.Vol III pg's . 50-51, 54-59)

In its rebuttal to the Defendant's closing argument the prosecutor stated that the witness Mark Anthony Jones had testified that L. J. is Dejon or Little Jon. The Defendant objected to the statements of the Prosecutor as not being in evidence. The Court did not correct this.(T. Vol III pg's 135-138)

After the jury had retired, the jury sent a note to the Judge requesting statements from Mark Anthony Jones, Dee Jimerson, William Coleman and Jimmy Valdez. The request would suggest that the Jury was not sure that the Prosecutor had stated the evidence properly. The Court felt that the problem with the request was that only the written statement of William Coleman was admitted in evidence. The Court concluded that only evidence introduced as evidence could be given to the jury. (T. Vol III p. 150) The jury then asked if they could get a transcript of

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the testimony of the witness, Antoinette Ewing. Again the answer was no, that to give the jury a transcript of the testimony of one witness, but not all the witnesses, would give undue emphasis to the testimony of a particular witness. (T. Vol III p. 157)

The jury found the Defendant guilty on three counts of aggravated robbery, one count of aggravated assault and one count of aggravated burglary, all enhanced by the use of a firearm plus one count of tampering with the evidence. (T. Vol III pg's 160-167) On May 30, 2001 the Defendant was sentenced to serve four terms of five years to life at the Utah State prison on his convictions of aggravated robbery and aggravated burglary and one to fifteen year on his conviction of aggravated assault with a one year gun enhancement on each, all terms to run concurrent with each other. On his conviction of one count of tampering with the evidence the Defendant was sentenced to serve a term of one to fifteen years at the Utah State prison, to run consecutively to the other sentences he was given. (T Sentencing Hearing pg's 8-9)

SUMMARY OF ARGUMENT

The Prosecutor committed prosecutorial misconduct in his closing argument, where over the objection of the Defendant he stated that Mark Anthony Jones had identified the perpetrator of the robberies at 840 West Ellis Street in Ogden, Utah

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as the Defendant, where in fact, Mark Anthony Jones testified that he was hit on the head when the assailant entered the house and he did not know the identity of the assailant.

The evidence presented to the Jury was insufficient for the jury to find beyond a reasonable doubt that the Defendant was the individual who entered the house at 840 W Ellis Street in Ogden, Utah, as there was no witness able to identify the Defendant as the assailant, and the police made no test on the Defendant to determine if he had gunpowder residue on his hands.

POINT I

THE PROSECUTOR COMMITTED
PROSECUTORIAL MISCONDUCT WHEN
IN REBUTTAL CLOSING ARGUMENT TO
THE JURY HE STATED THAT MARK
ANTHONY JONES HAD IDENTIFIED THE
IDENTITY OF THE ASSAILANT AS LITTLE
JOHN, L. J OR DEJON, WHEN IN FACT
MARK ANTHONY JONES TESTIFIED
CONSISTENTLY THAT HE DID NOT
KNOW THE IDENTITY OF THE
ASSAILANT.

The Utah Supreme Court in the case of State v Dunn 850 P 2nd 1201 (Utah 1993) considered the issue of whether a prosecutor's comments in closing argument rose to the degree that a Defendant was entitled to a reversal of his conviction. The Court in Dunn, supra reviewed whether the following comments constituted

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prosecutorial misconduct, which entitled the Defendant to a new trial, to wit:

"Even more importantly than Ernest Sprinkle, Robert Dunn and Howard Scott or anyone else is the impact that every jury decision has on the criminal system and that's the most important factor you need to consider in reaching a just and honest decision here today because you're going to have to live with it and so is society and you are all aware of the publicity that surrounds this case, that surrounds any First Degree Murder case and the impact that it has when the jury reaches the verdict one way or another. Make sure that before you determine that there is reasonable doubt, make sure that before you elevate some of the concerns to the point of a reasonable doubt that you are being fair to the most important segment of society at large. . . .

In the Dunn, supra case the Defendant objected to the Prosecutor's remarks on appeal as they improperly implied that the jury, in weighing the evidence, was obligated to consider the judgment of society on the merits of the case. The same court in the cases of State v. Andreason 718 P.2d 400, 402 (Utah 1986) and State v. Smith 700 P.2d 1106, 1112 (Utah 1985) on closing arguments by the same prosecutors his arguments constituted error. However, the Court then stated that they must further determine whether the error was obvious and prejudicial. The Court stated if there is no prejudice then it would not consider other elements. The Court then stated that it need consider only whether, absent the comment, there would be a reasonable likelihood of an outcome more favorable to Dunn, in

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other words, they need to determine only whether their confidence in the verdict is undermined. The Court then considered the other evidence against Dunn and concluded that in light of the substantial evidence supporting the aggravated kidnaping charge, they thought there is little possibility that the jurors were further influenced by the prosecutor's remarks.

This Court in the case of State v Blubaugh 904 P. 2d 688 (Utah App 1995) was asked to consider whether certain remarks by the Prosecutor constituted prosecutorial misconduct in closing argument. The Court declined to consider the argument for several reasons. First, that Defendant did not make a contemporaneous object to the prosecutor's statement at trial. The Court stated that "failure to object waives the claim unless the remarks reach the level of plain error. Second, the Defendant has not alleged on appeal that the prosecutor's remarks reached the level of plain error Therefore, the Court would not consider the issue.

The Utah Supreme Court in considering a writ of certiorari from the Court of Appeals in the case of State v Saunders 992 P 2.d 951 (Utah 1999) stated the test for determining whether a prosecutor's statement in closing argument are improper and constitute error is whether his remarks "[call] to the juror's attention matters they would not be justified in considering in reaching a verdict. The prosecutors

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argument with respect to pre-information conduct was clearly intended to prejudice the outcome.

The evidence presented to the jury during the first day of the trial was the testimony of Mark Anthony Jones. This testimony clearly established that the witness could not identify the Defendant. This was the testimony that the jury had. The witness said he was hit on the head immediately when the assailant entered the house and basically was groggy during the whole time the assailant was in the house and did not know him.

During rebuttal closing argument the prosecutor stated that Mark Anthony Jones identified the Defendant as the assailant. This statement was not the testimony given by Mr. Jones. After the jury had retired for deliberation the jury sent an inquiry to the trial judge requesting a copy of the statement signed by Mark Anthony Jones. However, since the statement was not introduced in evidence the Judge ruled that the statement could not be given to the jury. Also the jury requested a transcript of the testimony of Mark Anthony Jones for review. However, the Judge ruled that since the transcript was not transcribed and could not be immediately transcribed, the jury would have to rely on their notes and memory. Both this ruling and the prosecutor's misconduct were plain error without which the verdict could probably been different. This testimony was a critical point in the trial.

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The Prosecutor by misquoting the testimony of Mark Anthony Jones in rebuttal closing argument wrongly established a jurisdictional requirement of identification of the Defendant as the perpetrator of the crime, supplemented the testimony and therefore unduly influenced the jury against the Defendant.

POINT II

THE EVIDENCE PRESENTED TO THE JURY WAS INSUFFICIENT FOR THE JURY TO FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS THE INDIVIDUAL WHO ENTERED THE HOUSE AT 840 WEST ELLIS STREET, IN OGDEN UTAH ON THE EVENING OF SEPTEMBER 23, 2000, AND COMMITTED THE CRIME, THEREBY FINDING THE DEFENDANT GUILTY OF AGGRAVATED ROBBERY, AGGRAVATED ASSAULT AND AGGRAVATED BURGLARY.

To convict the Defendant of the one count of assault the Jury must find beyond a reasonable doubt that the Defendant, in fact, was the individual who entered the house at 840 West Ellis Street, Ogden, Utah in the evening of September 30, 2000 and robbed the three individuals who were in the house at gun point. The evidence presented to the jury merely showed that the some individual entered the house after a female at approximately 10:30 p. m. with a Glock pistol. Some individual hit Mark Anthony Jones on the head with the pistol,

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took money from William Coleman and shot Jimmy Ray Valdez in the leg. None of the three individuals who testified identified the defendant as the assailant, even though at least one of the parties had known the Defendant personally.. The Ogden City police did not run any tests on the Defendant to determine if there was powder residue on his clothes or body. The only evidence presented to the jury was that the Defendant gave a pistol to a friend to have his fiancée to put the pistol in her handbag. It was never established that this was the gun the Defendant fired in this house at the victim. The Defendant chose not to testify in his own behalf.

This Court in the case of State v. Gonzales Case Number 990147-CA (Utah App 2000) considered whether the evidence was sufficient to convict the Defendant of the crime charged. The Court stated that we simply cannot say the evidence was sufficient to establish beyond a reasonable doubt each element of the crime. We cannot say that the reasonable inferences from the evidence were sufficient for the jury to find beyond a reasonable doubt that the defendant hid the marijuana believing an investigation was going to occur and in order to impede the investigation. "We will not make speculative leaps across gaps in the evidence." Smith 927 P 2d at 651. We simply cannot conclude that the State introduced sufficient evidence to support all the elements of evidence tampering beyond a reasonable doubt.

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The Utah Supreme Court in the case of State v. Kalis 735 P 2d 60 (Utah 1987) stated that in reviewing a defendant's conviction, we do not substitute our judgment for that of the jury. "So long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonably be made, our inquiry stops". "However our narrow independent review of the record in this case leads us to conclude that here there was no evidence from which findings of all the requisite elements of the crime could reasonably have been drawn."

In the instant case all the evidence presented showed that a black individual entered into the house at 840 West Ellis Street, Ogden, Utah in the evening of September, 23 2000. The individual was not invited into the house. However, the individual hit one of the occupants in the head, robbed the owner and shot the third individual in the house, before leaving. Later the pistol, which was claimed to be the same weapon that the fired the shots in the house was found in the possession of the Defendant's friend's fiancée's handbag. Both the friend and the fiancée testified that the Defendant had given the pistol to the friend..

Nobody testified as to the. identity of the Defendant as the assailant. It required jury speculation to find that the Defendant was the individual who was the assailant in the house, who hit one of the occupants, robbed the owner and shot the

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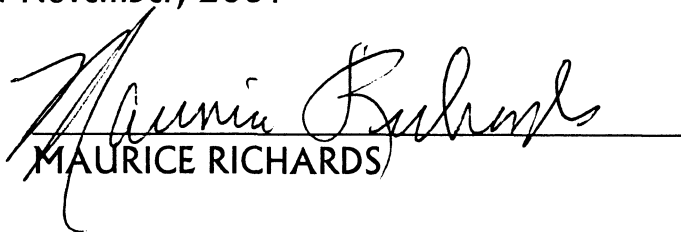
third occupant in the house.. Therefore, the State did not prove beyond a reasonable doubt that the Defendant was guilty of the offenses charged.

CONCLUSION

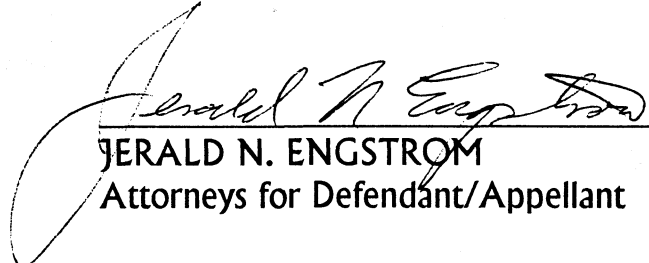
The Prosecutor committed prosecutorial misconduct when in his rebuttal closing argument, he misquoted the testimony of Mark Anthony Jones as saying that the Defendant was the assailant. The closing argument was made over the objection of the Defendant, but he had no opportunity to refute this.. The closing argument was especially damaging to the Defendant because the jury during deliberations requested that the Judge furnish them a copy of Mark Anthony Jones statement, which the judge declined, as it was not introduced in evidence, and when the jury requested a copy of the testimony of Mark Anthony Jones to establish what he had actually said, the judge declined because it was not transcribed. This was plain error

Without any evidence identifying the Defendant as the person in the house or the assailant or the person who fired the pistol, the jury had insufficient evidence to find the Defendant guilty of the offenses charged.

DATED this 1st of November, 2001


MAURICE RICHARDS

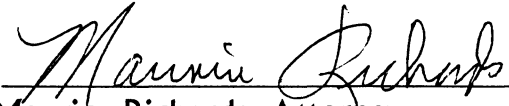
STATE OF UTAH V WALDRON
Case Number 30010552-CA


GERALD N. ENGSTROM
Attorneys for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Brief of Appellant was posted in the United States mail, postage prepaid, on this 1st day of November, 2001 and addressed to:

Mark Shurtliff
Attorney General
Heber M. Wells Building
160 East 300 South, 6th Floor
P. O. Box 140854
Salt Lake City, Utah 84114-0854


Maurice Richards, Attorney

ADDENDUM

1 A. I WAS SITTING AROUND DRINKING BEER, WATCHING TRACK MEET,
2 I THINK.

3 Q. YOU WERE WATCHING T.V. THEN?

4 A. YEAH.

5 Q. AND WHO WAS WITH YOU?

6 A. THERE WAS MY FRIEND ROY AND MARK JONES.

7 Q. AND DO YOU SEE EITHER ONE OF THEM HERE TODAY IN COURT?

8 A. I SEE ROY.

9 Q. OKAY. AND DID ANYBODY ELSE VISIT YOU THAT NIGHT?

10 A. YEAH, I HAD COUPLE PEOPLES COME BY TO VISIT THAT NIGHT.

11 Q. TELL ME WHEN THAT WAS.

12 A. I WAS SITTING THERE WATCHING T.V. AND KNOCK ON THE DOOR,
13 AND I TOLD MARK, ANSWER THE DOOR. MARK ANSWERED THE DOOR, A
14 GIRL WALKED IN. AND SHORTLY AFTER THE GIRL WALKED IN, THIS
15 MAN WALKS IN. AND MARK AND HIM HAVE WORDS ABOUT SOME MONEY.
16 HE HIT MARK. AND THEN IT WAS GUNPLAY, I MEAN --

17 Q. WHO HAD GUNS?

18 A. THE ONE, THE PERSON, THE ONE GUY, THAT'S ONLY GUN I SEEN
19 IS ONE GUN.

20 Q. THE PERSON WHO CAME IN AFTER THE GIRL?

21 A. AFTER THE GIRL.

22 Q. ALL RIGHT. HAD YOU INVITED THAT PERSON INTO THE HOUSE?

23 A. NO, I DIDN'T.

24 Q. DID YOU HEAR -- DID MARK INVITE THAT SECOND PERSON INTO
THE HOUSE, THE ONE WITH THE GUN?

1 A. NO. IT WAS JUST OPEN THE DOOR AND SHE WALKED IN. SHE
2 WASN'T EVEN INVITED IN. AND THEN HE WALKED IN.

3 Q. OKAY. AND WHEN HE WALKED IN, DID YOU SEE WHETHER OR NOT
4 HE HAD A GUN --

5 A. HE --

6 Q. -- AT THE TIME?

7 A. -- NO, NOT AT THAT TIME HE DIDN'T BECAUSE HE HIT MARK.
8 AND THEN WHEN MARK FELL BACK ON THE COUCH, THAT'S WHEN THE
9 GUNPLAY COME IN.

10 Q. SO DID YOU SEE HIM PULL OUT THE GUN AT THAT TIME?

11 A. WELL, HE PULLED OUT SOMETHING. I DON'T KNOW WHAT IT WAS
12 AT FIRST UNTIL THE SHOT WENT OFF.

13 Q. OKAY. AND WHEN HE -- DO YOU REMEMBER WHAT HE WAS
14 WEARING THAT NIGHT?

15 A. DARK CLOTHES.

16 Q. DARK. WAS HE WEARING A JACKET OR NO JACKET?

17 A. IT WAS -- I DON'T -- I THINK IT WAS A BIG PARKA OR
18 SOMETHING.

19 Q. OKAY.

20 A. THIS GUY WAS BIG, MAN, I MEAN --

21 Q. AND DO YOU REMEMBER WHAT COLOR IT WAS OTHER THAN DARK?

22 A. IT COULD HAVE BEEN DARK BLUE, DARK -- IT COULD HAVE BEEN
23 BLACK. IT WAS DARK.

24 Q. OKAY. AND YOU SAID YOU NOTICED -- DID HE HAVE ANYTHING
25 ON HIS HEAD OR NOT?

1 A. NO. I -- I DON'T THINK HE HAD ANYTHING ON HIS HEAD, I
2 DON'T THINK.

3 Q. OKAY. AND DID YOU REMEMBER HOW HIS HAIR WAS?

4 A. IT WAS BRAIDED UP LIKE MINE.

5 Q. OKAY.

6 A. BUT IF IT WAS BRAIDED ACROSS, I DON'T KNOW, BACK, I
7 DON'T KNOW, I CAN'T REMEMBER.

8 Q. LIKE CORN ROWS?

9 A. YEAH.

10 Q. OKAY. AND YOU SAID THAT HE HIT MARK, AND THEN MARK
11 TUMBLED BACK?

12 A. YEAH, MARK FELL BACK ON THE COUCH.

13 Q. OKAY.

14 A. AND THEN HE ASKED FOR THE MONEY, AND MARK OWED HIM SOME
15 MONEY OR SOMETHING. AND SO WE WAS JUST TRYING TO GET
16 EVERYTHING QUIET AND SQUASH IT.

17 Q. AND HOW WERE YOU TRYING TO DO THAT?

18 A. WELL, I OFFERED TO PAY HIM, WHATEVER MARK OWED HIM, I
19 OFFERED TO PAY IT.

20 Q. AND THEN WHAT HAPPENED?

A. WELL, FIRST -- FIRST HE -- THE GUY SAID HE WANTED IT
ALL. I THINK IT WAS 140, \$150 OR SOMETHING. SO I WAS GONNA
TAKE WHAT I HAD AND WHAT ROY HAD, WE WAS GONNA PUT IT
TOGETHER, WE WAS GONNA PAY HIM, BUT HE JUST -- HE TOOK THE
MONEY AND -- AND I DIDN'T EVEN GET A CHANCE TO COUNT AND SEE

1 WHAT I HAD.

2 Q. AND THEN WHAT HAPPENED, SIR?

3 A. AND THEN HE WALKED BY AND HE HIT ROY. AND THEN ROY SAID
4 SOMETHING TO HIM AND THEY GOT TO FIGHTING. AND I SHOT OFF IN
5 THE OTHER ROOM AND -- AND I HEARD A COUPLE MORE SHOTS AND --
6 AND DISAPPEARED.

7 Q. ALL RIGHT. HOW LONG WERE YOU IN THE OTHER ROOM?

8 A. NOT -- NOT LONG.

9 Q. AND WHEN YOU CAME --

10 A. I DON'T THINK I WAS IN THERE THAT LONG.

11 Q. WHEN YOU CAME BACK OUT, WHAT'D YOU FIND?

12 A. NOTHING. EVERYBODY GONE.

13 Q. AND THEN DID YOU SEE JIMMY -- I MEAN, WELL, YOU CALL HIM
14 ROY, RIGHT? DID YOU SEE HIM LATER ON THAT NIGHT?

15 A. YEAH, I HAD TO FIND HIM. I HAD FIND HIM. I DIDN'T KNOW
16 WHERE HE DISAPPEARED TO.

17 Q. WHERE YOU DID FIND HIM?

18 A. I FOUND HIM -- FOUND HIM -- EVENTUALLY HE WAS IN THE CAR
19 WITH THE DOG, AND COULDN'T NOBODY GET IN THE CAR BUT ME AND A
20 FRIEND OF MINE BECAUSE THAT DOG WOULDN'T LET NOBODY IN THERE
1 BUT US.

2 Q. AND WHAT WAS HIS CONDITION?

3 A. SHIT, HE WAS ALMOST DEAD.

4 Q. HOW SO?

5 A. BLEEDING TO DEATH, I GUESS. I MEAN BIG OLD BLOOD, YOU

1 KNOW, I -- SHIT, ALMOST BLED TO DEATH.

2 Q. OKAY. DO YOU REMEMBER WHERE HE WAS BLEEDING FROM?

3 A. HIS LEG. I DON'T KNOW WHICH ONE.

4 Q. AND HOW LONG WAS IT BEFORE THE POLICE ARRIVED?

5 A. SHOOT, I HAD TROUBLE GETTING THEM TO THAT ADDRESS. BUT
6 THEY CAME AND -- AND FINALLY WE -- THEY GOT -- THEY GOT THE
7 DOG, GOT HIM, AND AMBULANCE CAME. FINALLY WE GOT HIM GOING
8 TO THE HOSPITAL. BUT IT SEEMED LIKE A HOUR TO ME, BUT IT
9 COULDA BEEN QUICKER. ALWAYS SEEM LIKE A LONG TIME WHEN
10 YOU'RE WAITING.

11 Q. RIGHT. AND YOU WERE WORRIED ABOUT YOUR FRIEND, RIGHT?

12 A. YEAH.

13 Q. ALL RIGHT. AND THEN WHEN THIS ALL TOOK PLACE, THE
14 PERSON THAT HAD THE GUN DEMANDING MONEY FROM MARK, DID YOU
15 KNOW THAT PERSON?

16 A. NO, I'D NEVER SEEN HIM BEFORE IN MY LIFE. I DON'T KNOW
17 HIM. HE COULD BE TALKING TO ME RIGHT NOW, I DON'T KNOW HIM.

18 Q. OKAY. DO YOU REMEMBER WHAT HE LOOKED LIKE AT ALL?

19 A. I JUST KNOW HE WAS BIG AND HE HAD BRAIDS IN HIS HAIR
20 AND'S JUST A BIG KID.

21 Q. AND WAS HE BLACK OR WHITE OR --

22 A. OH, HE WAS BLACK.

23 Q. AND YOU SAID KID, SO WAS HE YOUNG MAN?

24 A. WELL, TO ME HE'S A KID. I'M 55 YEARS OLD, SO TO ME HE
WAS A KID. I DON'T KNOW.

1 Q. ALL RIGHT. NOW, AFTER THIS INCIDENT TOOK PLACE, DID YOU
2 EVER HAVE CONTACT WITH A PERSON WHO CAME INTO YOUR HOUSE --

3 A. NO.

4 Q. -- AND STARTED SHOOTING, DID YOU EVER HAVE CONTACT WITH
5 THAT PERSON AGAIN?

6 A. I NEVER SEEN HIM. NEVER SAW HIM AGAIN AND -- AND NEVER
7 SEEN HIM BEFORE THAT AND NEVER SAW HIM AFTER THAT.

8 Q. OKAY.

9 A. IF I DID, I DIDN'T KNOW WHO I WAS LOOKING AT.

10 Q. OKAY. AND THAT'S THE QUESTION I HAVE FOR YOU. YOU SAID
11 YOU PROBABLY WOULDN'T RECOGNIZE HIM?

12 A. I MEAN -- I MEAN HE WASN'T FROM HERE. IT WASN'T FROM --
13 SEE, I WAS BORN AND RAISED HERE. I KNOW ALL THESE KIDS, THE
14 MEN, I MEAN, AND ANYBODY WHO WOULD DO SOMETHING LIKE THAT HAD
15 TO BE FROM SOMEWHERE ELSE BECAUSE THEY WOULDN'T COME IN MY
16 MOTHER'S HOME AND DID THAT. AND THEN -- I DON'T KNOW HIM.

17 Q. I'M JUST GONNA ASK YOU IF YOU'D LOOK AROUND THE
18 COURTROOM AND SEE IF YOU SEE THAT PERSON.

19 A. IF -- IF IT'S HIM, I DON'T KNOW WHO -- IF IT WAS HIM, I
20 DON'T KNOW -- THERE AIN'T NO OTHER BLACK PERSON IN HERE BUT
21 ME. I DON'T KNOW THE MAN.

22 Q. OKAY.

A. I JUST KNOW HE COME IN MY HOME AND DID WHAT HE DONE. I
KNOW WHAT HAPPENED. BUT I DON'T KNOW WHO DID IT.

MR. WEISKOPF: OKAY. THANKS VERY MUCH. I DON'T THINK I

1 THANK YOU. GO AHEAD, MR. WEISKOPF.

2 JIMMY ROY VALDEZ,

3 BEING FIRST DULY SWORN, WAS EXAMINED

4 AND TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. WEISKOPF:

7 Q. WOULD YOU STATE YOUR FULL NAME FOR THE COURT PLEASE?

8 A. JIMMY ROY VALDEZ.

9 Q. MR. VALDEZ, HOW OLD ARE YOU?

10 A. FORTY-SEVEN.

11 Q. AND WHERE DO YOU RESIDE? YOU DON'T HAVE TO GIVE AN
12 ADDRESS, JUST TELL ME THE TOWN.

13 A. I LIVE -- I LIVE IN OGDEN.

14 Q. OKAY. AND HAVE YOU LIVED HERE SINCE SEPTEMBER 23RD OF
15 LAST YEAR?

16 A. YES.

17 Q. AND DO YOU REMEMBER WHAT YOU WERE DOING ON THE EVENING
18 OF SEPTEMBER 23RD AROUND TEN O'CLOCK?

19 A. YEAH, I WAS SITTING AT BINKY'S HOUSE WATCHING T.V. WE
20 WAS DRINKING BEER, AND ALL THE SUDDEN, SOME --

21 Q. OKAY. FOR THOSE OF US WHO DON'T KNOW BINKY, WHAT'S HIS
22 REAL NAME?

23 A. I DON'T KNOW HIS REAL NAME.

24 Q. DO YOU KNOW HIM AS BINKY?

25 A. YEAH, I'VE KNOWN HIM AS BINKY ALL MY LIFE.

1 Q. WAS HE HERE IN COURT THIS MORNING?

2 A. YEAH, HE WAS HERE. HAS THE RESPIRATOR ON.

3 Q. OKAY. HE'S THE PERSON WHO TESTIFIED THIS MORNING?

4 A. YEAH.

5 Q. AND YOU SAY YOU WERE OVER TO HIS HOUSE?

6 A. YEAH, WE WAS WATCHING T.V. AND DRINKING BEER.

7 Q. AND DO YOU REMEMBER WHERE HIS HOUSE IS?

8 A. IT'S UP THE STREET FROM MINE.

9 Q. IN WEST ELLIS?

10 A. YES.

11 Q. IN WEST OGDEN?

12 A. YEAH, WEST OGDEN.

13 Q. OKAY. WHO WAS WITH YOU, IF ANYBODY?

14 A. NOBODY WAS WITH ME, JUST MY DOG. I STOPPED UP THERE TO
15 WATCH SOMETHING ON T.V. AND WE WAS DRINKING BEER. AND I WAS
16 GETTING READY TO GO, AND ALL OF THE SUDDEN IS ALL'S I KNOW IS
17 THIS GIRL COME IN. THEN SHE LEFT, AND THEN SHE CAME BACK,
18 AND KNOCKED ON THE DOOR, I GUESS. I -- I WASN'T PAYING
19 ATTENTION.

20 Q. SO YOU DIDN'T HEAR A KNOCK?

21 A. WELL, I HEARD A KNOCK AND I GUESS BINKY TOLD WHAT'S HIS
22 NAME, BECAUSE HE WAS IN THE BATHROOM, TOLD SOMEBODY TO ANSWER
23 THE DOOR. I DIDN'T KNOW HIM TOO GOOD. I KNEW HIS MOM, I
24 USED TO WORK WITH HER AT HERCULES.

25 Q. SO THERE WAS A THIRD PERSON OVER AT THE HOUSE WITH YOU?

1 A. YEAH, I DIDN'T KNOW HIM.

2 Q. OKAY.

3 A. I KNEW BINKY, BUT --

4 Q. WHAT'D HE LOOK LIKE?

5 A. KINDA TALL. SKINNY. I DON'T -- IT WAS KINDA DARK IN
6 THERE, I DIDN'T --

7 Q. WHITE OR BLACK OR --

8 A. BLACK GUY, YEAH.

9 Q. -- ASIAN? BLACK?

10 A. BLACK, YEAH.

11 Q. AND DID YOU SEE THE GIRL COME INTO THE HOUSE?

12 A. YEAH, I SEEN HER COME IN.

13 Q. AND WHEN SHE CAME IN, DID SHE COME IN ALONE?

14 A. YEAH, WELL, SHE WALKED IN AND THEN SOMEBODY WALKED IN
15 RIGHT BEHIND HER. I DIDN'T REALLY PAY ATTENTION UNTIL THE
16 GUY LOOKING AT THE OTHER GUY, HE WAS FACING -- I WAS FACING
17 THIS WAY. I DIDN'T REALLY TAKE GOOD LOOK AT HIS FACE.

18 Q. UH-HUH.

19 A. IS ALL I KNOW, HE SAY, YOU GOT MY MONEY. AND HE DIDN'T
20 HAVE HIS MONEY, SO HE FIRED --

21 Q. HE WHAT?

22 A. FIRED -- FIRED A BULLET BETWEEN HIS LEGS. AND BY THEN I
23 GOT SCARED, YOU KNOW, AND THEN BINKY SAID, WELL, HOW MUCH
24 DOES HE OWE YOU. AND SO HE -- BINKY WAS GONNA GIVE HIM SOME
25 MONEY. HE TOOK ALL HIS MONEY, THEN HE POINTS A GUN AT MY

1 HEAD, SAID, GIVE ME YOUR MONEY. I SAID, I AIN'T GIVIN' UP MY
2 MONEY. YOU GONNA HAVE TO SHOOT ME, YOU KNOW. AND I JUST GOT
3 UP AND I STARTED WALKING TOWARDS THE DOOR. AND WHEN I GOT
4 TOWARDS THE DOOR, HE SAID, YOU THINK I'M PLAYING, AND HE
5 SHOT. I DON'T THINK HE MEANT TO HIT ME OR NOTHING, BUT HE
6 PUT IT BY MY LEG, AND THEN IT HIT MY LEG. AND THEN I TURNED
7 AROUND AND HE POINTED IT AT MY HEAD, AND I GRABBED IT AND WE
8 STARTED WRESTLING. BY THEN I RAN OUT OF -- RAN OUT OF BLOOD,
9 I GUESS. I DON'T EVEN REMEMBER GETTING TO MY CAR. I GOT TO
10 MY CAR, THE DOOR WAS OPEN. THAT'S WHAT THEY TOLD ME.

11 Q. OKAY.

12 A. MY DOG WOULDN'T LET NOBODY IN THERE TO GET ME.

13 Q. SO YOUR CAR WAS PARKED THERE --

14 A. YEAH, IT WAS PARKED RIGHT THERE.

15 Q. -- BINKY'S HOUSE?

16 A. YEAH, RIGHT -- REAL CLOSE BY THE DOOR.

17 Q. SO LET'S GO THROUGH THIS A LITTLE SLOWER. WHEN -- ARE
YOU IN THE FRONT ROOM?

18 A. YEAH, I WAS IN THE FRONT ROOM SITTING DOWN.

19 Q. AND WHEN THIS INDIVIDUAL COMES IN AND STARTS DEMANDING
MONEY FROM MARK --

20 A. YEAH.

21 Q. -- WHERE ARE YOU ALL LOCATED? OR AT LEAST --

22 A. I'M SITTING OVER HERE ON THE COUCH IN THE -- THIS
FURTHEST -- FURTHER AWAY FROM HIM, YOU KNOW --

1 A. YEAH, I HAD MY HAND ON THE DOOR, I WAS TRYING TO OPEN
2 IT.

3 Q. AND AFTER HE SHOT YOU, YOU SAID YOU TURNED TOWARDS HIM?

4 A. YEAH, I TURNED TOWARDS HIM AND ONE BULLET WENT IN THE
5 ROOF --

6 Q. DID -- WAS THAT BEFORE OR AFTER YOU GRABBED THE GUN?

7 A. THAT'S -- I DON'T REMEMBER. IT HAPPENED SO DAMN FAST, I
8 KNOW I GRABBED -- GRABBED IT WHEN IT WENT IN THE CEILING, AND
9 THEN I -- I DON'T KNOW WHAT HAPPENED. I GUESS I RAN OUT OF
10 BLOOD OR --

11 Q. OKAY.

12 A. -- BECAUSE I WAS BLEEDING PRETTY BAD.

13 Q. DO YOU REMEMBER WHAT THIS INDIVIDUAL LOOKED LIKE?

14 A. NO, I DON'T.

15 Q. WELL --

16 A. LIKE I TOLD THE OFFICERS, I SAID, SOMEBODY POINT A GUN
17 AT YOUR HEAD, YOU AIN'T GONNA BE LOOKING AT THEIR FACE, YOU
18 KNOW, I WAS LOOKING AT THE GUN.

19 Q. DO YOU REMEMBER WHETHER HE WAS DARK-SKINNED OR
20 FAIR-SKINNED?

21 A. I DON'T KNOW. IT WAS KINDA DARK IN THAT HOUSE, YOU
22 KNOW.

23 Q. OKAY. SO DARK THAT YOU COULDN'T SEE?

24 A. OH, I COULD SEE A LITTLE BIT, YOU KNOW, BUT I DIDN'T --
25 WHEN SOMEBODY'S SHOOTING A GUN OR SOMETHING, I'M -- I WAS

1 **THE BAILIFF:** I'LL PUT ANOTHER SET OF CUFFS ON OR GIVE
2 HIM A LITTLE MORE EXTENSION.

3 **THE COURT:** BEST WE'LL DO, WE'LL LOOSEN 'EM.

4 **MR. WEISKOPF:** ALL RIGHT. THANKS.

5 **THE COURT:** UNLESS YOU NEED HIM TO WRITE. THANK YOU,
6 DEPUTY. YOU MAY PROCEED, MR. WEISKOPF.

7 **MR. WEISKOPF:** THANK YOU, JUDGE.

8 **MARK ANTHONY JONES,**

9 BEING FIRST DULY SWORN, WAS EXAMINED

10 AND TESTIFIED AS FOLLOWS:

11 **DIRECT EXAMINATION**

12 **BY MR. WEISKOPF:**

13 **Q.** WOULD YOU STATE YOUR FULL NAME FOR THE COURT?

14 **A.** MARK ANTHONY JONES.

15 **Q.** AND, MARK, HOW OLD ARE YOU?

16 **A.** THIRTY-EIGHT.

17 **Q.** AND WHERE ARE YOU FROM, MARK?

18 **A.** OGDEN, UTAH.

19 **Q.** AND IS THIS WHERE YOU RESIDED ALL YOUR LIFE?

20 **A.** YES, SIR.

21 **Q.** AND DO YOU REMEMBER WHAT YOU WERE DOING ON SEPTEMBER
22 23RD OF THE EVENING APPROXIMATELY TEN O'CLOCK? OF LAST YEAR?

23 **A.** I WAS OVER FRIEND'S HOUSE.

24 **Q.** AND DO YOU REMEMBER WHAT THAT FRIEND'S NAME IS?

25 **A.** YES, I DO.

1 Q. AND WOULD YOU TELL THE COURT PLEASE, SIR?

2 A. WILLIAM COLEMAN.

3 Q. OKAY. AND IS HE KNOWN BY ANY OTHER NAMES?

4 A. BINKY.

5 Q. THANK YOU, SIR. AND WHAT WERE YOU DOING OVER AT YOUR
6 FRIEND WILLIAM COLEMAN'S HOUSE?

7 A. I WAS WORKING ON A VEHICLE. BUT AT THE TIME, I WAS --
8 DURING THE DAY I WAS WORKING ON VEHICLE AND I WAS WATCHING
9 OLYMPICS.

10 Q. OKAY. SO DURING THE DAY YOU WERE WORKING ON A VEHICLE.
11 IS THAT ONE OF MR. COLEMAN'S VEHICLES OR WAS IT ONE OF YOUR
12 OWN?

13 A. ONE OF MR. COLEMAN'S.

14 Q. AND DURING THE NIGHT YOU SAID YOU WERE WATCHING THE
15 OLYMPICS. WAS THAT ON TELEVISION?

16 A. YES, IT WAS.

17 Q. AND WERE YOU WATCHING TELEVISION IN -- WELL, EXCUSE ME,
18 WHICH ROOM WERE YOU WATCHING TELEVISION IN, DO YOU REMEMBER?

19 A. FRONT ROOM.

20 Q. OKAY. AND THAT WOULD BE THE ONE CLOSEST TO THE FRONT
21 DOOR?

22 A. YES, SIR.

23 Q. THANK YOU. I KEEP DOING THAT. CAN YOU JUST SPEAK UP A
24 LITTLE BIT, MARK, SO THAT EVERYBODY CAN HEAR YOU?

25 A. YES, SIR.

1 Q. THANK YOU, SIR. ALL RIGHT. WHO WAS THERE WITH YOU AND
2 MR. COLEMAN, IF ANYBODY?

3 A. A FRIEND, ROY. ROY -- ME, ROY, AND BINKY.

4 Q. DO YOU KNOW WHAT ROY'S FULL NAME IS?

5 A. I DON'T.

6 MR. WEISKOPF: IF I CAN APPROACH.

7 THE COURT: YOU MAY.

8 BY MR. WEISKOPF:

9 Q. LET ME SHOW YOU A PHOTO MARKED AS STATE'S EXHIBIT 4. DO
10 YOU RECOGNIZE THE PERSON IN THAT PHOTO?

11 A. I DO.

12 Q. WHO IS THAT?

13 A. THAT'S ROY.

14 Q. THAT'S ROY? THANK YOU. AND WHEN YOU WERE WATCHING T.V.
15 WITH ROY AND WITH MR. COLEMAN, DID ANYBODY ELSE COME TO THE
16 HOUSE?

17 A. YES.

18 Q. AND WHO WAS THAT?

19 A. A FEMALE LIMITED LINDA.

20 Q. OKAY. DID YOU KNOW THIS INDIVIDUAL NAMED LINDA?

21 A. I'D SEEN HER EARLIER THAT DAY.

22 Q. AND WHEN -- DO YOU REMEMBER WHEN THAT DAY?

23 A. I REMEMBER WHEN?

24 Q. UH-HUH.

25 A. NO. JUST HAPPENED TO SEE HER.

1 IN THE DAY AT ALL?

2 A. SHE WAS THERE EARLIER IN THE DAY, THEN SHE CAME BACK BY
3 LATER THAT DAY.

4 Q. I COULDN'T HEAR YOU. BY WHEN?

5 A. SHE WAS THERE EARLIER THAT DAY, THEN SHE CAME BY LATER
6 THAT DAY.

7 Q. OKAY. WHAT TIME?

8 A. I DON'T RECOGNIZE -- REMEMBER WHAT TIME IT WAS.

9 Q. WAS IT LIGHT OR DARK OUT?

10 A. IT WAS DARK OUT.

11 Q. OKAY. AND DO YOU KNOW WHO SHE WAS COMING TO SEE? WAS
12 SHE COMING TO SEE YOU?

13 A. NO.

14 Q. DID YOU HAVE PLANS TO MEET HER?

15 A. NO.

16 Q. OKAY. WERE YOU THERE WHEN SHE CAME TO THE HOUSE IN THE
EVENING?

17 A. YES, I WAS.

18 Q. ALL RIGHT. TELL ME WHAT HAPPENED WHEN SHE CAME TO THE
HOUSE, WHAT YOU FIRST NOTICED.

19 A. WELL, THERE WAS KNOCK AT THE DOOR. BINKY ASKED ME TO
SEE WHO IT WAS. PEAKED OUT THE WINDOW AND I SEEN HER
STANDING ON HIS FRONT PORCH.

20 Q. WAS SHE STANDING THERE ALONE OR WITH SOMEBODY ELSE?

21 A. SHE WAS ALONE.

1 Q. ALONE?

2 A. SHE WAS ALONE.

3 Q. OKAY. AND WHAT DID YOU DO?

4 A. I TOLD HIM WHO IT WAS. HE SAID, LET HER IN.

5 Q. OKAY. AND YOU WENT TO THE DOOR THEN?

6 A. YES.

7 Q. AND YOU OPENED THE DOOR?

8 A. I OPENED THE DOOR.

9 Q. AND WHEN YOU OPENED THE DOOR, WHO WAS THERE?

10 A. SHE WAS THERE.

11 Q. ALONE OR WITH SOMEONE ELSE?

12 A. WELL, AFTER I TURNED MY HEAD TO LET HER IN, BECAUSE
13 LOOKING AT T.V., I DON'T KNOW, SOMEBODY CAME IN BEHIND HER.

14 I DON'T KNOW WHO IT WAS.

15 Q. OKAY. AND THAT -- WHAT IF ANYTHING DID LINDA SAY?

16 A. WELL, I DON'T KNOW. WHEN I OPENED THE DOOR AND I TURNED
17 MY HEAD TO LOOK AT THE T.V., I GOT HIT.

18 Q. YOU GOT HIT BY SOMEBODY.

19 A. I GOT HIT BY SOMETHING.

20 Q. DO YOU KNOW WHO HIT YOU?

21 A. RIGHT NOW, IT'S TOO FOGGY. I CAN'T REMEMBER WHO HIT ME.

22 Q. OKAY. WAS IT LINDA?

23 A. WELL, LIKE I SAID, WHEN I OPENED THE DOOR, I TURNED TO
24 LOOK TO THE T.V. BECAUSE SHE'D BEEN THERE EARLIER AND, YOU
25 KNOW, I JUST OPENED THE DOOR, TURNED TO LOOK AT THE T.V.

1 BECAUSE IT WAS SOMETHING I WAS WAITING ON, IT WAS A SPRINTING
2 RACE, AND WHEN I TURNED TO LOOK, I DON'T KNOW IF IT WAS HER,
3 IT WAS LIKE -- I DON'T KNOW. ALL I KNOW IS I WAS HIT WITH
4 SOMETHING, AND I WENT DOWN.

5 Q. OKAY. YOU WENT DOWN? WHERE WERE YOU HIT?

6 A. IN THE HEAD.

7 Q. CAN YOU SHOW -- POINT TO WHERE YOU WERE HIT?

8 A. LET'S SEE, LIKE ON THE SIDE OF THE HEAD HERE SOMEWHERE.

9 Q. OKAY. WAS IT HARD ENOUGH TO KNOCK YOU DOWN OR DID YOU
10 JUST GO DOWN OUT OF SHOCK OR FRIGHT?

11 A. IT WAS HARD ENOUGH TO KNOCK ME DOWN.

12 Q. OKAY. DID YOU LOSE CONSCIOUSNESS?

13 A. WELL, IT WAS -- I WAS -- I WAS DAZED PRETTY BAD --

14 Q. OKAY.

15 A. -- I, YOU KNOW, A LOT WAS GOING ON. I JUST --

16 Q. WHEN YOU LOOKED, WHEN YOU FIRST WERE ABLE TO LOOK UP,
17 WHO IF ANYBODY WAS THERE?

18 A. STARS.

19 Q. OKAY. ANY PEOPLE YOU WERE ABLE TO MAKE OUT?

20 A. WELL, I KNOW BINKY WAS THERE AND I HEARD HIS VOICE AND
21 I, YOU KNOW, I RECOGNIZED ROY. BUT, YOU KNOW, THE PERSON
22 THAT CAME IN, I -- I DON'T KNOW WHO IT WAS.

23 Q. OKAY.

24 A. SOMEONE ELSE CAME IN WITH LINDA.

25 Q. AND WHAT'D THAT PERSON SAY TO YOU, DO YOU KNOW?

1 A. WELL, LIKE I SAID, I WAS HIT.

2 Q. UH-HUH.

3 A. AND I WAS HIT A COUPLE TIMES. SO TRYING TO RECOLLECT
4 WHAT HAPPENED, WHAT WAS ACTUALLY SAID, IS HARD TO SAY. IT'S
5 FOGGY AND I'M UNCLEAR, I'M UNSURE.

6 Q. OKAY. DO YOU REMEMBER ANYTHING HE SAID TO YOU?

7 A. WELL, AFTER -- THERE WAS -- I HEARD SOME BANGING, SOME
8 LOUD NOISES IN MY, YOU KNOW, IT WAS JUST -- AFTER EVERYTHING
9 WAS OVER WITH, ALL I KNOW IS WE WENT RUNNING AROUND LOOKING
10 FOR -- SOMEONE WAS, YOU KNOW, APPARENTLY SHOT, AND I WAS
11 RUNNING AROUND LOOKING FOR THE PERSON.

12 Q. OKAY. SO IS THE BANGING YOU HEARD CONSISTENT WITH
13 SHOTS?

14 A. WELL, BANGING WITH MY HEAD, YOU KNOW, IT'S HARD TO SAY.

15 Q. OKAY. SO YOU REMEMBER WHAT THIS OTHER PERSON LOOKED
16 LIKE WHO CAME IN WITH LINDA AT ALL?

17 A. I DIDN'T SEE THE PERSON.

18 Q. AND LET ME ASK YOU, WHEN YOU WERE RUNNING AROUND LOOKING
19 FOR THE PERSON THAT WAS SHOT, DID YOU SEE IF ANY CAR LEFT?

20 A. IT WAS ABOUT -- IT WAS ABOUT -- WE RAN THROUGH THE HOUSE
21 FIRST. IT WAS ABOUT FIVE MINUTES BEFORE WE EVEN GOT OUTSIDE,
22 BEFORE WE GOT OUTSIDE.

23 Q. AND WHO'S -- WHO IS WE THAT WENT RUNNING THROUGHOUT?

24 A. ME AND BINKY.

25 Q. OKAY. AND WHEN YOU DID GET OUTSIDE, WHAT DID YOU FIND?

1 A. WELL, AFTER WE WENT THROUGH THE HOUSE, ALL THROUGH THE
2 BACK OF THE HOUSE AND INSIDE OF THE HOUSE, I WENT OUTSIDE
3 ONCE AND COULDN'T SEE ANYTHING. CAME BACK IN, TOLD 'EM I
4 COULDN'T SEE ANYTHING. I WENT BACK OUT AGAIN AND I SEEN HIS
5 CAR. I WENT TO HIS CAR, AND ROY WAS IN HIS CAR, UNCONSCIOUS.

6 Q. OKAY. COULD YOU TELL WHAT IF ANYTHING WAS WRONG WITH
7 HIM?

8 A. DOORS WERE LOCKED. COULDN'T TELL.

9 Q. OKAY. WERE YOU THERE WHEN THE DOORS WERE OPENED?

10 A. I WAS INSIDE THE HOUSE WITH OFFICERS.

11 Q. OKAY. SO LET ME ASK, YOU SAID YOU DIDN'T SEE THAT GUY.
12 ARE YOU FAMILIAR WITH THIS GENTLEMAN THAT'S HERE SITTING AT
13 THE TABLE?

14 A. I KNOW THE -- HE DOESN'T LOOK LIKE I KNOW HIM WHEN I
15 KNEW HIM, BUT FROM WHAT I KNOW HIM BY, WHAT HIS NAME IS, BUT
16 HE DOESN'T LOOK THE SAME AS HE DOES WHEN I KNOW HIM WHEN HE
17 LIVED BY MY SISTER.

18 Q. OKAY. HOW LONG AGO DID YOU KNOW HIM?

19 A. LAST SUMMER.

20 Q. AND HOW'D HE LOOK LAST SUMMER?

21 A. JUST SHORT HAIR. JUST DOESN'T LOOK THE SAME.

22 Q. WHAT WAS THAT?

23 A. HE JUST DOESN'T LOOK LIKE THE SAME PERSON THAT -- I
24 HAVEN'T SEEN HIM IN A WHILE, SO --

25 Q. AND HOW DID YOU -- WHAT'S HIS NAME, DO YOU KNOW THAT?

1 A. I KNEW HIM AS D.J.

2 Q. D.J. DID YOU KNOW HIM AS ANY OTHER NAMES?

3 A. D.J., DEJON, THAT'S IT.

4 Q. HAVE YOU EVER HEARD OF HIM CALLED LITTLE JOHN?

5 A. I'VE HEARD THE NAME THROUGH THE NEIGHBORHOOD, BUT --

6 Q. OKAY. SO THOSE ARE NAMES YOU KNEW HIM BY?

7 A. I COULDN'T SAY THAT THE LITTLE JOHN WAS PART OF HIM.

8 Q. OKAY. AND WHAT WAS YOUR RELATIONSHIP WITH DEJON OR
9 D.J.?

10 A. HIM AND HIS COUSIN LIVED ABOVE MY SISTER.

11 Q. OKAY. SO YOU'D SEE HIM AROUND?

12 A. I'D SEE HIM OCCASIONALLY.

13 Q. DID YOU HAVE ANY OTHER BUSINESS WITH HIM?

14 A. I'D SEE HIM OCCASIONALLY. HE'D COME DOWN. WE'D HAVE
15 DINNER. WE'D COOK DINNER. THEY'D COME DOWN TO EAT. JUST
16 CASUAL THINGS.

17 Q. OKAY. SO YOU WERE FAIRLY FRIENDLY WITH HIM AND --

18 A. YES, I WAS.

19 Q. NOT CLOSE FRIENDS.

20 A. JUST -- HE LIVED ABOVE MY SISTER, HIM AND HIS COUSIN. I
21 WOULD COME BY AND I'D SEE 'EM. WE'D VISIT. NOTHING REALLY
22 STRICT.

23 Q. DID YOU HAVE ANY BUSINESS WITH HIM WHICH YOU MIGHT OWE
24 HIM MONEY?

25 A. NO. IT WAS -- IT WAS A DEBT. THEY LOANED ME SOME MONEY

1 AND I -- IT WAS PAID BACK IN ANOTHER WAY THAT I HANDLED SOME
2 BUSINESS FOR HIM. WORKED ON ONE OF THEM'S CAR AND IT WAS --
3 IT WAS TAKEN CARE OF.

4 Q. OKAY.

5 A. BUT I GUESS HE WAS --

6 Q. WHAT WAS THAT? I'M SORRY.

7 A. I TOOK CARE OF ONE OF THEIR CARS FOR 'EM AND --

8 Q. OKAY. SO THERE WAS SOME MONEY THAT YOU HAD OWED AT SOME
9 POINT WHICH YOU TOOK CARE OF -- YOU TOOK CARE OF IT IN KIND.
10 YOU TOOK -- YOU DID SOME SERVICE ON THE CAR TO TAKE CARE OF
11 IT?

12 A. YES, SIR.

13 Q. DID HE EVER ACKNOWLEDGE THAT TO YOU THAT, THANKS, THAT
14 TAKES CARE OF IF?

15 A. IT WASN'T DONE THROUGH HIM.

16 Q. OKAY. AND WHEN DID YOU DO THAT, DO YOU REMEMBER, THAT
17 CAR WORK?

18 A. I CAN'T RECALL.

19 Q. WAS IT LAST SUMMER?

20 A. IT WAS LAST SUMMER.

21 Q. HOW LONG DID YOU KNOW MR. WALDRON BEFORE SEPTEMBER, SAY,
22 IF YOU SAID LAST SUMMER, DID YOU KNOW HIM BEFORE LAST SUMMER?

23 A. NO, SIR.

24 Q. DID YOU SEE HIM BEFORE LAST SUMMER AT ALL?

25 A. NO, SIR.

1 HOUSE?

2 A. I REMEMBER, YES, ANSWERING SOME QUESTIONS FOR 'EM, YES.

3 Q. OKAY. DID YOU SIGN A WRITTEN STATEMENT?

4 A. NO, I DIDN'T SIGN ANYTHING.

5 Q. CAN I ASK YOU WHY YOU DIDN'T GIVE A WRITTEN STATEMENT?

6 A. BECAUSE I WAS UNSURE OF EVERYTHING.

7 Q. OKAY. NOW, YOU'RE UNSURE TODAY ABOUT WHAT HAPPENED?

8 A. WELL, A LOT OF THINGS THAT HAVE -- THAT HAVE -- WAS, YOU
9 KNOW, WE -- WAS TALKED ABOUT WHILE -- AFTER STUFF WENT DOWN,
10 YOU KNOW, WE, YOU KNOW, LOT OF THINGS ARE TOLD TO ME AND, YOU
11 KNOW, THAT, YOU KNOW, SO THAT'S BASICALLY WHAT WAS TOLD TO
12 ME. I WAS UNSURE OF EVERYTHING, THE WAY THINGS WENT DOWN,
13 YOU KNOW. I WAS KIND OF CONSCIOUS, UNCONSCIOUS, BUT THINGS
14 THAT HAPPENED, I GUESS IT HAPPENED SO FAST AND -- AND, YOU
15 KNOW, SO BASICALLY, YOU KNOW, LOT OF THINGS ARE TOLD TO ME,
16 YOU KNOW, WAS BROUGHT TO MY ATTENTION TO HELP ME.

17 Q. BUT THE ONE THING YOU'RE SURE OF IS LINDA GALLEGOS,
18 WOMAN IN EXHIBIT 2, WAS WITH --

19 A. SHE'S THE ONE I OPENED THE DOOR FOR.

20 MR. WEISKOPF: OKAY. THANK YOU. LET ME APPROACH AGAIN,
21 IF I MAY.

22 THE COURT: OKAY. YOU MAY DO SO.

23 MR. WEISKOPF: THANK YOU, JUDGE.

24 Q. DO YOU RECOGNIZE WHAT THIS STATE'S EXHIBIT 1 IS A PHOTO
25 OF?

1 THAT YOU RECALL?

2 A. I CAN'T RECALL.

3 Q. OKAY. NOW, DO YOU REMEMBER SPEAKING WITH MYSELF AND
4 THIS OFFICER DOWN IN SALT LAKE?

5 A. YES, I DO.

6 Q. OKAY. DO YOU REMEMBER THEN WHETHER YOU INDICATED YOU
7 RECALLED WHAT HAPPENED THAT NIGHT OR NOT?

8 A. I REMEMBER TELLING YOU THAT WHAT HAPPENED THAT NIGHT
9 WAS -- WAS REALLY MESSED UP SITUATION. IT WAS SOMETHING THAT
10 NEVER SHOULDA HAPPENED. AND THAT -- I CAN'T REMEMBER WHAT I
11 REALLY SAID.

12 Q. OKAY. DO YOU REMEMBER SAYING THAT IF YOU TESTIFIED, YOU
13 COULDN'T LIVE IN OGDEN?

14 A. I COULDN'T LIVE IN OGDEN?

15 Q. UH-HUH.

16 A. NO. I DON'T THINK I SAID IT THAT -- ANYTHING LIKE THAT.

17 MR. WEISKOPF: OKAY. I HAVE NO FURTHER QUESTIONS.

18 THE COURT: OKAY. MR. WALDRON.

19 CROSS-EXAMINATION

20 BY MR. WALDRON:

21 Q. MARK, YOU TOLD THE GENTLEMAN THAT ME AND MY COUSIN USED
22 TO LIVE ABOVE YOU AND THAT WE USED TO COME DOWN AND HAVE
23 DINNER WITH YOU.

24 A. YES.

25 Q. LUNCH AND DINNER, WHATEVER.

1 **MR. WALDRON:** NO.

2 **THE COURT:** ALL RIGHT. YOU MAY STAND DOWN, OFFICER
3 OBERG. THANK YOU. NEXT WITNESS.

4 **MR. WEISKOPF:** STATE CALLS DEMARKEE JIMERSON. JIMERSON.

5 **THE COURT:** SIR, IF YOU'LL PLEASE STEP FORWARD, FACE
6 MISS ALLEN, RAISE YOUR RIGHT HAND, AND BE SWORN.
7 HAVE A SEAT UP HER PLEASE, SIR.

8 **DEMARKEE JIMERSON,**
9 BEING FIRST DULY SWORN, WAS EXAMINED
10 AND TESTIFIED AS FOLLOWS:

11 **DIRECT EXAMINATION**

12 **BY MR. WEISKOPF:**

13 **Q.** WOULD YOU STATE YOUR FULL NAME FOR THE COURT?

14 **A.** DEMARKEE JIMERSON.

15 **Q.** AND, DEMARKEE, HOW OLD ARE YOU?

16 **A.** I'M 21.

17 **Q.** CAN YOU TELL US WHERE YOU WERE RESIDING ON SEPTEMBER
18 23RD OF THE YEAR 2000?

19 **A.** IN 1015 PATTERSON.

20 **Q.** AND WHERE IS 1015 PATTERSON LOCATED?

21 **A.** IT'S IN OGDEN.

22 **Q.** OKAY. HERE IN OGDEN? AND IN RELATION -- 1015, WHAT ARE
23 THE STREET COORDINATES?

24 **A.** IT'S -- IT'S ON PATTERSON AVENUE, LIKE RIGHT A LITTLE
25 BIT BELOW HARRISON BOULEVARD.

1 Q. OKAY. AND DO YOU KNOW WHERE IN RELATION TO 30TH BLOCK
2 IN ECCLES YOU WOULD BE?

3 A. RIGHT OFF THE JACKSON STREET AND PATTERSON.

4 Q. SO IS THAT CLOSE?

5 A. OFF OF 30TH.

6 Q. SO A COUPLE BLOCKS?

7 A. UH-HUH.

8 Q. OKAY. NOW, ON THE EVENING OF THE 23RD, AT ROUGHLY SAY
9 10:30-ISH, A LITTLE BEFORE, LITTLE AFTER, WERE YOU HOME?

10 A. YES.

11 Q. AND YOU SAID YOU WERE LIVING AT 1015 PATTERSON THEN?

12 A. UH-HUH.

13 Q. YES.

14 A. YES, SIR.

15 Q. WERE YOU HOME BY YOURSELF OR WITH SOMEBODY ELSE?

16 A. I WAS WITH MY FIANCE.

17 Q. AND WHO'S THAT?

18 A. HER NAME'S ANTOINETTE EWING.

19 Q. OKAY. AND WHEN YOU AND ANTOINETTE WERE THERE, DID
20 ANYBODY AROUND THAT TIME COME TO VISIT YOU?

21 A. NO.

22 Q. YOU DIDN'T SEE ANYBODY THAT NIGHT AROUND 10:30?

23 A. NOT THAT I REMEMBER.

24 Q. OKAY. ARE YOU FAMILIAR WITH THIS INDIVIDUAL?

25 A. YES.

1 Q. OKAY. AND YOU VISITED HIM THERE?

2 A. I HAVE.

3 Q. ON THE NIGHT IN QUESTION, DID DEJON COME TO VISIT YOUR
4 HOUSE IN PATTERSON?

5 A. YES, SIR.

6 Q. AND ABOUT WHAT TIME WAS THAT?

7 A. I'M NOT FAMILIAR. PROBABLY AROUND -- AROUND 10:30,
8 ELEVEN, SOMEWHERE AROUND THAT TIME.

9 Q. AND HOW DID HE COME TO THE HOUSE? DID HE KNOCK ON THE
10 FRONT DOOR? WHAT'D HE DO?

11 A. HE CAME TO MY BACK DOOR.

12 Q. DID HE COME IN ANNOUNCED OR UNANNOUNCED?

13 A. UNANNOUNCED.

14 Q. AND SO HE JUST WALKED IN?

15 A. YES, SIR.

16 Q. AND HOW DID HE APPEAR TO YOU AT THE TIME?

17 A. HE WAS COOL. HE WAS COOL AT THE TIME.

18 Q. DO YOU REMEMBER WHAT HE WAS WEARING?

19 A. I DON'T.

20 Q. OKAY. DO YOU REMEMBER WHAT KIND OF EVENING IT WAS THAT
21 NIGHT, COLD OR WARM?

22 A. I CAN'T REMEMBER, NO, SIR, TO TELL YOU THE TRUTH.

23 Q. SO YOU DON'T REMEMBER WHETHER HE WAS WEARING A JACKET OR
24 NOT.

25 A. I DON'T.

1 Q. AND WHAT DID HE TELL YOU WHEN HE CAME TO THE HOUSE?

2 A. HE HAD TOLD ME THAT HE JUST HAD WRECKED A CAR AROUND THE
3 CORNER FROM MY HOUSE.

4 Q. AND -- AND WHAT? ANYTHING ELSE?

5 A. NO, SIR, THAT'S IT.

6 Q. DID HE ASK YOU TO HELP HIM GO DO ANYTHING WITH THE CAR?

7 A. NO, SIR, NOT AT ALL.

8 Q. WHAT DID HE -- DID HE SAY ANYTHING ABOUT WHAT HE WANTED
9 TO DO?

10 A. NO, SIR.

11 Q. AND WHAT DID HE DO?

12 A. SHORTLY AFTER, HE LEFT.

13 Q. OKAY. DO YOU KNOW HOW HE CAME TO LEAVE?

14 A. I DON'T. I WAS INSIDE MY HOUSE. HE LEFT OUT MY DOOR.

15 Q. DID HE SAY WHETHER HE COULD STAY OR HAD TO LEAVE?

16 A. I ASKED HIM TO LEAVE, ACTUALLY. I TOLD HIM I DIDN'T
17 WANT ANY TROUBLE IN MY HOUSE.

18 Q. SO YOU SUSPECTED THERE WAS SOME TROUBLE?

19 A. WELL, HE SAID HE HAD WRECKED A CAR, YES, SIR, SO I'M
20 PRETTY --

21 Q. YOU DIDN'T ASK FOR DETAILS?

22 A. NO, SIR, NOT AT ALL.

23 Q. OKAY. AND HOW DID HE COME TO LEAVE YOUR HOUSE?

24 A. I'M NOT FOR SURE, BUT I THINK HE GOT A RIDE.

25 Q. WERE YOU THERE, DID HE MAKE ANY ARRANGEMENTS TO GET A

1 RIDE THAT YOU SAW?

2 A. NOT THAT I REMEMBER.

3 Q. OKAY. AND SO HOW LONG WOULD YOU SAY HE WAS AT YOUR
4 HOUSE?

5 A. NO LONGER THAN THREE TO FIVE MINUTES.

6 Q. THREE TO FIVE MINUTES?

7 A. YES, SIR.

8 Q. OKAY. NOW, YOU SAID YOU KNEW HIM FOR A WHILE AND YOU
9 TALKED TO HIM THAT NIGHT. WHEN YOU REFER TO HIM, HOW DID YOU
10 REFER TO HIM, BY WHAT NAME?

11 A. L.J.

12 Q. AND WHAT'S THAT STAND FOR?

13 A. LITTLE JOHN.

14 Q. DID YOU KNOW HIM BY ANY OTHER NAMES?

15 A. NO, SIR.

16 Q. OKAY. AND WHEN L.J. LEFT, DID YOU HEAR FROM HIM AGAIN
17 THAT EVENING OR NOT?

18 A. YES, SIR, I DID.

19 Q. AND TELL ME WHAT THE CIRCUMSTANCES WERE OF YOUR HEARING
20 FROM HIM AGAIN THAT EVENING.

21 A. WELL, I GOT A CALL FROM HIM SHORTLY AFTER I WAS GETTING
22 READY TO LEAVE, AND HE HAD ASKED ME TO COME UP TO SEE HIM UP
23 AT KATHY'S HOUSE. AND THAT'S WHAT I -- I WENT UP THERE TO
24 SEE WHAT WAS GOING ON.

25 Q. OKAY. NOW, BEFORE -- BETWEEN THE TIME THAT HE LEFT AND

1 A. THEY SAID THEY THOUGHT HE MIGHTA HAD SHOT SOMEONE. THEY
2 DIDN'T KNOW.

3 Q. AND YOU STILL DIDN'T TELL THEM THAT HE WAS THERE?

4 A. NO, SIR.

5 Q. OKAY. WHEN THE POLICE LEFT, DID YOU GO UP TO SHADOW
6 VALLEY TO KATHY COLUNGA'S HOUSE?

7 A. YES, SIR.

8 Q. DID YOU GO UP ALONE OR WITH SOMEBODY ELSE?

9 A. IT WAS ACTUALLY A BUDDY OF MINE THAT TOOK ME UP THERE,
10 AND MY FIANCE.

11 Q. ANTOINETTE?

12 A. YES, SIR.

13 Q. AND DID THAT BUDDY OF YOURS STAY OR DID HE LEAVE YOU
14 OFF?

15 A. NO, SIR, HE DROPPED US OFF.

16 Q. AND YOU AND ANTOINETTE WENT INSIDE KATHY COLUNGA'S
17 HOUSE?

18 A. YES, SIR.

19 Q. AND WHO WAS THERE?

20 A. KATHY AND NINA.

21 Q. ANYBODY ELSE?

22 A. NO, SIR, NOT THAT I REMEMBER.

23 Q. WAS L.J. THERE?

24 A. YES, SIR, HE WAS THERE ALSO.

25 Q. AND WHERE WAS HE?

1 A. DOWNSTAIRS.

2 Q. AND WHEN YOU SAY DOWNSTAIRS, TELL ME ABOUT THE
3 DOWNSTAIRS OF KATHY'S -- COLUNGA'S HOUSE. WHAT KIND OF
4 DOWNSTAIRS IS IT? IS IT AN UNFINISHED BASEMENT, IT IS A --

5 A. NO, SIR, IT'S FINISHED.

6 Q. AND?

7 A. HE WAS DOWNSTAIRS IN THE FAMILY ROOM.

8 Q. OKAY. DID YOU KNOW WHEN -- YOU SAID THAT D.J. STAYED
9 THERE EXCEPT -- L.J., EXCUSE ME, AS YOU CALLED HIM, STAYED
10 THERE AT TIMES. WHEN HE'D STAY THERE, DO YOU KNOW WHERE --
11 WHAT PART OF THE HOUSE HE STAYED IN?

12 A. NO, SIR.

13 Q. WHEN YOU GOT IN THERE, DID YOU -- WHO DID YOU TALK TO?

14 A. I TALKED TO LITTLE JOHN, L.J.

15 Q. AND TELL US ABOUT THAT CONVERSATION, HOW DID THAT GO?

16 A. IT WENT -- IT WENT -- IT WAS PRETTY FAST. HE JUST SAID
17 HE HAD NEEDED TO LEAVE. AND BASICALLY THAT WAS IT.

18 Q. DID HE SAY WHY HE NEEDED TO LEAVE?

19 A. NO, SIR.

20 Q. WHEN -- WHAT WAS HE DOING IF ANYTHING TO -- TO LEAVE, DO
21 YOU KNOW?

22 A. NO, SIR, I DON'T. I WAS IN THE FAMILY ROOM.

23 Q. OKAY. WAS HE IN THE ROOM WITH YOU THE WHOLE TIME?

24 A. NO, SIR, NOT THE WHOLE, HE WASN'T.

25 Q. WAS ANTOINETTE IN THE ROOM WITH YOU THE WHOLE TIME?

1 A. SHE WAS ON OCCASIONS. I THINK SHE LEFT OUT A COUPLE
2 TIMES.

3 Q. OKAY. WHO ELSE -- WAS ANYBODY ELSE IN THE ROOM WITH YOU
4 THE WHOLE TIME?

5 A. NO.

6 Q. OKAY. WHAT WERE YOU DOING IN THE ROOM?

7 A. JUST WATCHING T.V.

8 Q. DID ANYBODY ELSE COME TO THE HOUSE THAT NIGHT?

9 A. NOT THAT I REMEMBER.

10 Q. HOW LONG WERE YOU WATCHING T.V.?

11 A. FOR ABOUT TEN MINUTES OR SO.

12 Q. WHAT INTERRUPTED YOUR WATCHING T.V.?

13 A. THE POLICE CAME TO THE DOOR.

14 Q. OKAY. THE MAIN DOOR OF THE HOUSE?

15 A. YES, SIR.

16 Q. AND HOW'D YOU KNOW IT WAS THE POLICE?

17 A. BECAUSE WE COULD HEAR 'EM.

18 Q. YOU COULD HEAR 'EM DOWNSTAIRS.

19 A. YES, SIR.

20 Q. AND WHEN THE POLICE CAME TO THE DOOR, WHAT WERE THEY
21 SAYING?

22 A. THEY WERE ASKING IF DEJON WALDRON WAS HERE -- WAS THERE.

23 Q. AND YOU COULD HEAR THAT?

24 A. YES, SIR.

25 Q. AND WHO WERE THEY TALKING TO, DO YOU KNOW?

1 THERE.

2 A. NO, SIR, I DIDN'T.

3 Q. AND HOW LONG DID THIS GO ON, THIS DISCUSSION WITH THE
4 POLICE?

5 A. NO LONGER THAN FIVE TO TEN MINUTES.

6 Q. AND THEN WHAT HAPPENED?

7 A. AND THEN THEY LEFT, AND SHORTLY AFTER, WE LEFT.

8 Q. AND HOW DID YOU COME ABOUT LEAVING?

9 A. WE GOT A RIDE FROM NINA.

10 Q. AND WHO'S NINA?

11 A. I THINK THAT'S KATHY'S SISTER-IN-LAW.

12 Q. OKAY. AND WHO LEFT WITH YOU?

13 A. MY FIANCE, NINA, AND LITTLE JOHN.

14 Q. OKAY. AND HOW DID YOU LEAVE?

15 A. WE LEFT IN NINA'S TRUCK.

16 Q. AND WHAT KIND OF TRUCK IS THAT?

17 A. A WHITE CHEVY.

18 MR. WALDRON: MR. WEISKOPF, CAN YOU COME HERE A SECOND?

19 MR. WEISKOPF: OH, I APOLOGIZE.

20 MR. WALDRON: THANK YOU.

21 MR. LAKER: TAKE OFF YOUR WATCH, IT'S REFLECTING.

22 MR. WEISKOPF: IF I CAN APPROACH THE WITNESS.

23 THE COURT: YOU MAY.

24 BY MR. WEISKOPF:

25 Q. LET ME SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 7. DO

1 YOU RECOGNIZE THAT VEHICLE?

2 A. YES, SIR.

3 Q. AND WHAT IS IT?

4 A. THAT'S THE -- THAT'S THE TRUCK THAT WE WERE IN.

5 Q. AND STATE'S EXHIBIT 8, DO YOU RECOGNIZE THAT VEHICLE?

6 A. YES, SIR.

7 Q. THE SAME ONE?

8 A. YES, SIR.

9 Q. AND STATE'S EXHIBIT 9?

10 A. YES, SIR, THOSE ARE THE SAME.

11 Q. OKAY. LEAVE THOSE THERE FOR THE TIME BEING. AND YOU
12 SAY THERE WERE FOUR OF YOU IN THE VEHICLE.

13 A. YES, SIR.

14 Q. HOW WERE YOU ARRANGED IN THE VEHICLE?

15 A. I WAS IN THE MIDDLE. NINA WAS THE DRIVER. AND MY
16 FIANCE WAS ON THE SIDE. AND L.J. WAS IN THE BACK.

17 Q. AND L.J. WAS IN THE BACK. AND WHAT WAS HE DOING?

18 A. FROM -- I CAN'T REALLY -- I DON'T KNOW. I WAS IN THE
19 FRONT.

20 Q. WAS HE SITTING UP TALKING TO YOU?

21 A. YES, SIR, WHEN WE LEFT WE WERE TALKING.

22 Q. WHEN YOU LEFT?

23 A. YES, SIR.

24 Q. DID HE CONTINUE TO TALK TO YOU?

25 A. YES, SIR.

1 Q. ALL RIGHT. YOU NEVER SAW HIM TRY AND CONCEAL HIMSELF IN
2 THE BACK?

3 A. NO, SIR, NOT AT ALL.

4 Q. OKAY. AND WHAT HAPPENED WHEN YOU GOT IN THE CAR AND
5 WENT TO LEAVE -- WELL, FIRST OF ALL, WHERE WAS THE TRUCK WHEN
6 YOU GOT INTO IT?

7 A. IT WAS IN THE DRIVEWAY.

8 Q. OF KATHY COLUNGA'S HOUSE?

9 A. YES, SIR.

10 Q. AND WHEN YOU WENT TO LEAVE KATHY COLUNGA'S HOUSE, WHAT
11 HAPPENED?

12 A. WELL, SHORTLY AFTER WE PULLED OUT OF KATHY COLUNGA'S
13 HOUSE -- SHE LIVES IN A CUL DE SAC. SHORTLY AFTER THAT,
14 WE -- WE WERE PULLED OVER.

15 Q. DID YOU EVEN GET OUT OF THE CUL DE SAC?

16 A. YES, SIR, WE DID.

17 Q. OKAY. WHEN YOU SAY PULLED OVER, TELL THE JURY WHAT
18 HAPPENED.

19 A. WELL, TWO POLICE OFFICERS PULLED THE TRUCK OVER.

20 Q. OVERHEAD LIGHTS?

21 A. YES, SIR, THE LIGHTS WERE ON.

22 Q. ACTIVATED OVERHEAD LIGHTS?

23 A. YES, SIR, THE LIGHTS WERE ON.

24 Q. ACTIVATED THEIR OVERHEAD LIGHTS.

25 A. YES, SIR.

1 **A.** NO, SIR.

2 **Q.** DID HE GIVE YOU ANYTHING TO TAKE?

3 **A.** BEFORE WE GOT IN THE CAR? NO.

4 **Q.** DID HE GIVE ANTOINETTE ANYTHING TO TAKE?

5 **A.** WELL, WHEN WE WERE IN THE HOUSE.

6 **Q.** OKAY. WHAT HAPPENED IN THE HOUSE WITH RESPECT TO THAT?

7 **A.** WELL, RIGHT SHORTLY AFTER THE POLICE HAD LEFT, WE WERE
8 GETTING READY TO LEAVE. AND AS WE WERE GETTING READY TO GO
9 UP THE STAIRS, HE HAD A -- HANDED ME THE GUN AND TOLD ME TO
10 GIVE IT TO MY FIANCE. AND THAT WAS IT. AND WE LEFT.

11 **Q.** DID HE TELL YOU WHY TO GIVE IT TO YOUR FIANCE?

12 **A.** NO.

13 **Q.** HE DIDN'T TELL YOU ANY REASON, JUST GIVE IT TO THE
14 FIANCE?

15 **A.** YES, SIR, BASICALLY.

16 **Q.** NOW, WHEN -- AT THIS TIME THE POLICE HAD TOLD YOU, YOU'D
17 ALREADY SAID, RIGHT, THAT YOU SUSPECTED OF BEING A SHOOTING.

18 **A.** YES, SIR.

19 **Q.** DID YOU THINK THAT THAT GUN MIGHT HAVE BEEN A GUN
20 INVOLVED IN A SHOOTING?

21 **A.** I DIDN'T KNOW --

22 **MR. LAKER:** OBJECTION.

23 **MR. WALDRON:** OBJECTION.

24 **MR. LAKER:** CALLS FOR SPECULATION.

25 **MR. WALDRON:** CALLS FOR SPECULATION.

1 **A.** YES, SIR, I -- WELL, I WAS OUT -- I WAS ON THE CURB.

2 **Q.** DID YOU SEE THE VEHICLE BEING SEARCHED?

3 **A.** YES.

4 **Q.** ALL RIGHT. WHEN YOU GAVE THE GUN TO ANTOINETTE, DID YOU
5 SEE WHAT ANTOINETTE DID WITH IT?

6 **A.** NO, I DIDN'T.

7 **Q.** ALL RIGHT. WHEN -- AFTER THE POLICE GOT YOU OUT OF THE
8 VEHICLE AND THEY SEARCHED THE VEHICLE, DID YOU SEE WHERE THEY
9 FOUND THE GUN?

10 **A.** WELL, IT WAS IN HER PURSE.

11 **Q.** LET ME SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 11.
12 ARE YOU FAMILIAR WITH THE BAG DEPICTED IN THAT?

13 **A.** YES, SIR, THAT'S MY FIANCE'S.

14 **Q.** THAT'S THE PURSE?

15 **A.** YES, SIR.

16 **Q.** AND IS THAT THE BAG WHERE THE GUN WAS FOUND OR NOT?

17 **A.** IS THAT THE BAG WHERE THE GUN --

18 **Q.** THE PURSE.

19 **A.** YES, SIR, THAT'S THE -- WELL, THAT'S THE PURSE.

20 **Q.** OKAY.

21 **MR. WALDRON:** OBJECT TO THE FOUNDATION OF THIS, YOUR
22 HONOR.

23 **THE COURT:** WELL, LET HIM FINISH WITH IT FIRST. GO
24 AHEAD.

25 **MR. WEISKOPF:** ALL RIGHT. I BELIEVE HE'S ALREADY

1 SUBMITTED OR WAS I REFERRED TO A GUNPOWDER RESIDUE TEST TO
2 SEE IF I RECENTLY DISCHARGED A PISTOL?

3 A. NOT THAT I'M AWARE OF, NO.

4 Q. DID YOU OR ANY OTHER OFFICER FEEL IT WAS APPROPRIATE TO
5 SUBMIT ME TO A GUNPOWDER RESIDUE TEST TO ESTABLISH WHETHER I
6 HAD INDEED FIRED A FIREARM RECENTLY?

7 A. I DIDN'T.

8 Q. YOU DIDN'T. WOULD A GUNPOWDER RESIDUE TEST ESTABLISH
9 WHETHER I FIRED A PISTOL OR HANDLED A PISTOL THAT HAD BEEN
10 FIRED RECENTLY?

11 A. FROM WHAT I UNDERSTAND ON GUNPOWDER RESIDUE THEY WILL
12 EVEN INDICATE IF YOU'VE HANDLED THE PISTOL, NOT JUST FIRED
13 ONE.

14 Q. THAT'S WHAT I JUST ASKED.

15 A. RIGHT.

16 Q. THAT'S EXACTLY WHAT I JUST ASKED. IF I FIRED ONE OR
17 HANDLED A PISTOL THAT HAD BEEN FIRED?

18 A. RIGHT. AND I DID NOT HAVE ONE DONE.

19 Q. WHY?

20 A. BECAUSE I DIDN'T HAVE ONE DONE.

MR. WALDRON: NO FURTHER QUESTIONS.

THE COURT: REDIRECT?

MR. WEISKOPF: SURE.

REDIRECT EXAMINATION

BY MR. WEISKOPF:

1 SOME STATEMENTS THAT WERE NOT MARKED INTO -- INTO -- TO
2 EVIDENCE, AND SO I'M WONDERING IF THAT IS CONFUSING TO THEM.

3 **THE COURT:** I'LL BE MORE THAN HAPPY TO THROW IT OUT
4 IF YOU WANT ME TO. I WAS JUST INDICATING TO YOU WHY I PUT IT
5 IN THERE. THE ONLY REASON I PUT IT IN IS BECAUSE, QUITE
6 FRANKLY, IT HAS A MORE SIGNIFICANT IMPACT ON THE DEFENSE THAN
7 IT DOES ON THE PROSECUTION BECAUSE THE PROSECUTION HAS RELIED
8 PRIMARILY UPON THE STATEMENTS THAT WERE MADE BY WITNESSES IN
9 OPEN COURT. IT IS THE DEFENSE WHO HAS RELIED PRIMARILY ON
10 WRITTEN STATEMENTS MADE BY OTHER FOLKS THAT THEY COUNTER ARE
11 INCONSISTENT. AND I -- I DON'T WANT TO GIVE A CONFUSING
12 INSTRUCTION, BUT I'M JUST TRYING TO -- ON BEHALF OF THE
13 DEFENSE -- MAKE IT CLEAR THAT WRITTEN STATEMENTS AND WRITTEN
14 DEPOSITIONS ARE JUST AS EFFECTIVE WHETHER THEY'RE WRITTEN AS
15 WHETHER OR NOT THE PERSON TOOK THE STAND. SO I PUT IT IN
16 FOR --

17 **MR. LAKER:** I -- I DON'T HAVE ANY OBJECTION TO
18 THE -- TO THE --

19 **THE COURT:** OKAY.

20 **MR. LAKER:** -- INSTRUCTION.

21 **THE COURT:** I PUT IT IN FOR THE BENEFIT OF THE
22 DEFENSE.

23 **MR. WEISKOPF:** BUT I DO THINK IT IS SOMEWHAT
24 CONFUSING.

25 **THE COURT:** HOW DO YOU WANT ME TO CLARIFY IT?

1 BECAUSE I -- I TRIED TO MAKE IT AS -- IN -- IN THE PRESENT
2 ACTION, CERTAIN TESTIMONY -- NOT ALL TESTIMONY -- CERTAIN
3 TESTIMONY HAS BEEN READ TO YOU BY WAY OF DEPOSITION. YOU ARE
4 NOT TO DISCOUNT THIS TESTIMONY FOR THE SOLE REASON THAT IT
5 COMES TO YOU IN THE FORM OF A DEPOSITION. IT IS ENTITLED TO
6 THE SAME CONSIDERATION AS IF THE WITNESS HAD PERSONALLY
7 APPEARED.

8 THE WITNESS DID PERSONALLY APPEAR, BUT THEY DID MAKE
9 STATEMENTS OUTSIDE THE COURT. THEY SHOULD BE CONSIDERED THE
10 SAME. AND LIKE I SAY, I DIDN'T SAY ALL WRITTEN STATEMENTS OR
11 ALL WRITTEN DEPOSITIONS. I JUST SAID CERTAIN OF THEM.

12 **MR. WEISKOPF:** MY PROBLEM WITH THIS, YOUR HONOR, IS
13 THAT BECAUSE HE IS REPRESENTING HIMSELF -- AND ESPECIALLY
14 THIS MORNING -- I REFRAINED FROM MAKING HEARSAY OBJECTIONS
15 THAT I EASILY COULD HAVE MADE.

16 AND I DON'T THINK IT'S SIGNIFICANT REALLY, BUT IT
17 DOESN'T HAVE THE SAME WEIGHT. THE INFORMATION WAS NOT
18 ELICITED FROM PEOPLE WHO WERE HERE, SUBJECT TO BEING VIEWED.
19 THEY WEREN'T SWORN IN, THEY WEREN'T SUBJECT TO BEING VIEWED
20 FOR THEIR --

21 **THE COURT:** RIGHT. BUT HE WOULD NEVER GET TO ARGUE
22 THAT TO THE JURY. THE ONLY THING THAT HE WOULD ARGUE TO THE
23 JURY OR BE ABLE TO ARGUE TO THE JURY IS THAT THE YOUNG MAN
24 AND HIS FIANCEE' MADE STATEMENTS HERE IN OPEN COURT. AND HE
25 WOULD BE ABLE TO ARGUE THAT THE STATEMENTS THAT THEY MADE TO

1 SURPRISED THEY DID NOT GET AN OBJECTION BECAUSE I WOULD NOT
2 HAVE ALLOWED THAT IN FOR THE TRUTH OF THE MATTER ASSERTED. I
3 ONLY WOULD HAVE ALLOWED THAT IN FOR PURPOSES OF THE OFFICER'S
4 STATE OF MIND.

5 MR. WEISKOPF: AND THAT'S EXACTLY MY POINT. THAT'S
6 WHY I HAVE A PROBLEM WITH THIS INSTRUCTION.

7 THE COURT: BUT -- BUT THAT'S A TACTICAL --

8 MR. LAKER: BUT HE DIDN'T OBJECT. AND THAT'S A
9 TACTICAL DECISION.

10 THE COURT: THAT'S A TACTICAL DECISION THAT YOU
11 MADE.

12 MR. WEISKOPF: I UNDERSTAND THAT, BUT IT DOES NOT
13 MEAN THAT THOSE STATEMENTS HAVE THE SAME FORCE AS THOUGH THE
14 PERSON WERE HERE.

15 THE COURT: THEY DO IF YOU DON'T OBJECT TO THEM. IF
16 YOU ALLOW HEARSAY IN AND YOU DON'T OBJECT TO IT ON THE BASIS
17 THAT IT SHOULD BE ENTERED FOR A LIMITED PURPOSE, IT MOST
18 CERTAINLY COMES IN.

19 MR. WEISKOPF: IF YOU WANT TO SAY THAT, THAT'S FINE,
20 BUT I DON'T SEE THAT AS BEING THE CASE AT ALL. ALL HE IS
21 SAYING IS THAT IS WHAT HE WAS TOLD.

22 THE COURT: WELL, YOU GET TO ARGUE -- YOU GET TO
23 ARGUE THE WEIGHT OF THAT --

24 MR. WEISKOPF: OKAY.

25 THE COURT: -- AND YOU CAN GET UP AND SAY HE'S BUILT

1 HIS WHOLE CASE ON THE STATEMENTS THAT THE OFFICER UNDERSTOOD
2 AND THE OFFICER DOESN'T EVEN KNOW IF WHAT HE WAS TOLD WAS
3 TRUE.

4 BUT GETTING BACK TO THE ISSUE THAT YOU RAISED, THE WHOLE
5 REASON BEHIND THE HEARSAY IS TO KEEP THESE STATEMENTS OUT SO
6 THAT THEY'RE NOT INTRODUCED AND CAN'T BE ARGUED FOR THE TRUTH
7 OF THE MATTER ASSERTED. IF YOU WANT THOSE STATEMENTS TO COME
8 IN FOR OTHER REASONS, THEY COME IN. YOU CAN'T THEN ARGUE
9 THAT I'M GOING TO LET THEM IN FOR THIS PURPOSE, BUT FOR
10 PURPOSES OF ARGUMENT, THEY'RE LESS RELIABLE. THEY'RE EITHER
11 IN OR THEY'RE OUT, AND IF THEY'RE IN, THEY GET TO BE ARGUED;
12 IF THEY'RE OUT -- OR IF YOU ASK FOR A LIMITING INSTRUCTION.

13 LIKE I SAID, I'M NOT SECOND GUESSING YOU OR TELLING YOU
14 HOW TO PROSECUTE YOUR CASE. YOU MAY HAVE HAD REASONS WHY YOU
15 WANT IT TO COME IN, BUT ONCE THEY'RE IN, HE GETS TO MAKE THE
16 ARGUMENT.

17 AGAIN, THAT'S WHY I CHOSE TO GIVE THIS INSTRUCTION
18 BECAUSE I WAS FACED WITH THE -- WITH THE SAME THING. ONCE
19 YOU'VE AGREED THAT IT'S IN, IT'S IN.

20 **MR. WEISKOPF:** WELL, MY ONLY PROBLEM IS THE WAY
21 IT'S -- YOUR EXPLANATION IS A LOT MORE THAN THIS. THIS CAN
22 REASONABLY BE READ TO SAY THAT MR. DIXON'S STATEMENT SHALL BE
23 GIVEN ALL THE CREDIT THAT A WITNESS'S STATEMENT SHOULD BE
24 GIVEN SUBJECT TO -- THAT HAS BEEN SUBJECTED TO
25 CROSS-EXAMINATION, ANALYSIS, AND EVERY -- YOU KNOW,

1 EVERYTHING ELSE. THAT'S MY ONLY PROBLEM.

2 **THE COURT:** WELL, BUT -- BUT MY PROBLEM IS, THAT IS
3 THE RULE. IF THE STATEMENT IS ADMITTED INTO EVIDENCE AND NOT
4 OBJECTED TO, THEN I MAKE NO DISTINCTION BETWEEN THAT
5 STATEMENT AND ANY OTHER STATEMENT BECAUSE IT IS A THRESHOLD
6 STATEMENT. YOU MUST FIRST OBJECT TO IT.

7 **MR. WEISKOPF:** NO, I UNDERSTAND WHAT YOU'RE SAYING.

8 **THE COURT:** OKAY.

9 **MR. WEISKOPF:** I'M JUST SAYING IT -- IT SOUNDS --
10 THE WAY THIS IS PHRASED, IT SOUNDS LIKE IT GOES TO THE
11 WEIGHT. IS THAT JUST ME? BUT IT SOUNDS LIKE YOU'RE SAYING,
12 IT IS AS WEIGHTY. IT IS ENTITLED, YOU KNOW --

13 **THE COURT:** ANY -- ANY ADMISSIBLE EVIDENCE --
14 BECAUSE WHEN YOU GET TO THE DIRECT EVIDENCE AND THE
15 CIRCUMSTANTIAL EVIDENCE, COURT DOESN'T MAKE ANY DISTINCTION
16 BETWEEN THOSE. AND SO IF -- IF EVIDENCE IS ADMITTED AND
17 THERE IS NO OBJECTION AND IT COMES IN NOT FOR A LIMITED
18 PURPOSE, THEN IT GOES TO THE WEIGHT AND YOU CAN ARGUE IT AND
19 THEY ARE TREATED EQUALLY.

20 **MR. WEISKOPF:** NO, I SEE WHAT YOU'RE SAYING, BUT
21 I --

22 **MR. LAKER:** IT HAS AS MUCH WEIGHT AS THE JURY WANTS
23 TO PUT ON IT.

24 **THE COURT:** RIGHT. YES.

25 **MR. WEISKOPF:** RIGHT. THAT'S THE KEY. THAT'S

1 WHERE -- THAT'S --

2 THE COURT: BUT THAT'S AN ARGUMENT.

3 MR. WEISKOPF: THAT'S MY ONLY PROBLEM, AND I GUESS
4 THE KEY IS THE SOLE -- SOLE REASON.

5 THE COURT: WELL, YOU CAN'T DISCOUNT IT FOR THE SOLE
6 REASON --

7 MR. WEISKOPF: OKAY.

8 THE COURT: -- THAT SOMEBODY READ IT. YOU CAN
9 DISCOUNT IT FOR ANY REASON YOU WANT TO --

10 MR. WEISKOPF: RIGHT.

11 THE COURT: -- BUT YOU CAN'T SAY, WELL, I HAD -- YOU
12 CAN'T SAY -- YOU CAN'T SAY THAT BECAUSE THE YOUNG LADY
13 TESTIFIED HERE TODAY THAT SHE'S MORE CREDIBLE THAN WHEN SHE
14 TESTIFIED --

15 MR. WEISKOPF: RIGHT.

16 THE COURT: -- BEFORE BECAUSE THIS WAS ONLY ON PAPER
17 AND SHE WAS HERE IN REAL. THAT'S AN IMPROPER ANALYSIS.
18 SO -- AND ALL THIS SAYS IS THE FACT THAT YOU HAVE A WRITTEN
19 STATEMENT THAT SOMEBODY MADE EARLIER DOESN'T MEAN THAT FOR
20 THAT SOLE REASON ALONE --

21 MR. WEISKOPF: RIGHT.

22 THE COURT: -- THAT THAT WRITTEN STATEMENT IS ANY
23 LESS RELIABLE THAN THE FACT THAT SHE WAS HERE TODAY. BECAUSE
24 IF YOU DON'T MAKE THAT, THEN JURORS SIT THERE AND THINK WE
25 SHOULD ONLY BELIEVE WHAT WE HEARD TODAY FROM THE WITNESS

1 STAND, AND WHAT THEY SAID MONTHS AGO IS IRRELEVANT. THAT'S
2 NOT TRUE. BECAUSE THERE'S NO WAY THAT THEY WILL EVER MAKE
3 PRIOR CONSISTENT OR PRIOR INCONSISTENT STATEMENTS IN OPEN
4 COURT. THEY'LL ALWAYS HAVE MADE THOSE OUTSIDE THE COURT. SO
5 THE LAW SAYS, IF THOSE ARE ADMITTED, YOU TREAT THEM BOTH THE
6 SAME. AND PLEASE DON'T MAKE ANY DISTINCTION BECAUSE ONE WAS
7 LIVE TODAY AND ONE WAS IN WRITTEN FORM BACK IN SEPTEMBER --

8 MR. WEISKOPF: RIGHT.

9 THE COURT: -- WHEN THEY WERE TAKEN. AND THAT'S THE
10 ONLY DISTINCTION.

11 MR. WEISKOPF: SO -- OKAY. THEN -- THEN IT SEEMS TO
12 ME THAT WHAT WE NEED TO SAY IS THAT IN THE PRESENT ACTION
13 CERTAIN TESTIMONY HAS BEEN READ TO YOU OR RELATED TO YOU BY
14 WAY OF --

15 THE COURT: WRITTEN STATEMENT.

16 MR. WEISKOPF: -- OUT OF COURT STATEMENTS.

17 THE COURT: WELL, I DON'T -- I -- I TROUBLE WITH THE
18 OUT OF COURT STATEMENTS BECAUSE THEY WERE RELAYED TO THEM IN
19 COURT, BUT THEY WERE RELAYED TO THEM BECAUSE THEY WERE READ
20 AS WITNESS STATEMENTS.

21 MR. WEISKOPF: NOT ALL OF THEM. MAURICE'S WAS IN
22 WRITING, SO SAY OUT OF COURT WRITTEN STATEMENTS?

23 THE COURT: OKAY. MR. LAKER?

24 MR. LAKER: I LIKE YOUR LANGUAGE THE WAY IT STANDS,
25 YOUR HONOR.

1 **MR. WEISKOPF:** BUT IT'S NOT A SWORN DEPOSITION.

2 **THE COURT:** I AGREE WITH THAT.

3 **MR. LAKER:** IT DOESN'T SAY IT'S A SWORN DEPOSITION.

4 **THE COURT:** IT SAYS --

5 **MR. WEISKOPF:** BUT THERE'S NO OTHER KIND OF
6 DEPOSITION.

7 **THE COURT:** I AGREE. I'LL -- I'LL CHANGE THAT TO A
8 WRITTEN STATEMENT -- BY WAY OF WRITTEN STATEMENT. I'M
9 TROUBLED WITH THE OUT OF COURT STATEMENT. THE FACT THAT THEY
10 READ IT IN COURT MAKES THAT DISTINCTION.

11 **MR. WEISKOPF:** I UNDERSTAND WHAT YOU'RE SAYING.

12 **THE COURT:** SO I'LL CHANGE IT IN BOTH INCIDENCES
13 FROM DEPOSITION TO WRITTEN STATEMENT.

14 **MR. LAKER:** AND I DON'T HAVE ANY OBJECTION TO THAT.
15 (OFF-THE-RECORD DISCUSSION BETWEEN THE COURT AND CLERK.)

16 **MR. LAKER:** WRITTEN STATEMENTS?

17 **THE COURT:** WRITTEN STATEMENTS.

18 ALL RIGHT. I DID LEAVE IN THE STUFF ABOUT OPINIONS
19 BECAUSE I KNEW WE WERE GOING TO GET AN EXPERT TODAY AND WE
20 DID RECEIVE THAT. NORMALLY THEY ONLY COME UP.

21 ALL RIGHT. THE INSTRUCTION INVOLVING CERTAIN CHARTS AND
22 SUMMARIES HAVE BEEN SHOWN TO YOU. I INCLUDED THAT ONE
23 BECAUSE WE HAVE THE DRAWING.

24 I ASSUME IT'S STILL THERE, DEPUTY LOBATO?

25 SO THAT WAS THE REASON WHY I INTENDED TO GIVE THAT ONE

NOT ONE PIECE OF EVIDENCE THAT PUTS ME ANYWHERE OTHER THAN HOME. THAT'S ONE PLACE WE DO KNOW I WAS AT. AND THAT WAS AT HOME.

SO WITH THAT, I ASK THAT IF I ESTABLISHED AND IF THE EVIDENCE HAS ESTABLISHED A REASONABLE DOUBT THAT SOMEONE ELSE MAY HAVE BEEN RESPONSIBLE FOR THE CRIMES TRIED HERE IN THIS COURTROOM, I ASK THAT YOU PLEASE FIND ME NOT GUILTY. WITH THAT.

THE COURT: THANK YOU, MR. WALDRON.

MR. WEISKOPF, REBUTTAL?

MR. WEISKOPF: SURE. THANK YOU.

THERE ARE ONLY A FEW PROBLEMS WITH WHAT THE DEFENDANT'S ASKING. FIRST OF ALL, THERE'S NO EVIDENCE THAT HE WAS AT HOME. AS THE JUDGE SAID BEFORE, YOU CAN'T ARGUE THINGS THAT AREN'T IN EVIDENCE. THERE IS ABSOLUTELY NO EVIDENCE THAT HE WAS AT HOME AT THE TIME OF THESE OFFENSES.

AND THERE ARE A FEW OTHER PROBLEMS THAT I'D LIKE TO POINT OUT IN WHAT HE SAYS. HE SAYS THAT THE ONLY EVIDENCE THAT HE WAS AT 840 WEST ELLIS IS FROM DEMARKEE AND ANTOINETTE EWING BY THIS CHAIN OF EVIDENCE WITH THE GUN OR THE INFERENCES WITH THE GUN.

THE PROBLEM IS, MARK ANTHONY JONES, WHO HE RELIES ON HEAVILY TO HAVE TOLD US THE TRUTH UP HERE EVEN SAID AT THE END OF HIS TESTIMONY, AS HIS LIES STARTED FALLING APART, THAT L.J. IS DEJON. L.J. IS DEJON.

BUT WHEN HE STARTED, FIRST CROSS-EXAMINATION MR. WALDRON SAID: HAVE YOU EVER KNOWN ME AS L.J.?

NO.

THERE'S TALK IN HERE ABOUT LITTLE JOHN, L.J. DOING THIS OFFENSE. YOU EVER KNOWN ME AS THAT?

NO, JUST DEJON OR D.J.

HE IS -- I GUESS I CAN'T SAY DAMN -- DARNED BY HIS OWN COMPANION'S TESTIMONY. AND THERE'S MORE. HE INVOKES THE STATEMENT FROM MAURICE DIXON, LINDA'S HUSBAND. YOU KNOW, LINDA, WHO IS NOT HERE, HAS MADE HERSELF UNAVAILABLE. MAURICE -- HE'S INVOKED THE STATEMENT OF MAURICE DIXON. MAURICE DIXON'S COMPANY CAR, MAURICE REPORTS ABOUT THE TIME ALL THIS IS GOING DOWN, HAS BEEN TAKEN ALONG WITH HIS WIFE BY WHOM? NOT DEMARKEE. BY DEJON WALDRON. THAT WAS WHAT HE JUST ARGUED TO YOU. THAT'S WHAT MAURICE SAID. MAURICE PLACES HIM WITH LINDA IN THAT CAR.

NOW, WHY? I CAN BRING THIS UP; DEFENSE BROUGHT IT UP. BUT WHY? IT IS THE COMPANY CAR. HE AND LINDA ARE OUT -- DEJON AND LINDA ARE OUT DOING SOMETHING THAT HE'S GOING TO GET IN TROUBLE FOR. HE'S GOING TO REPORT THAT IT'S NOT HIS FAULT, IT'S NOT LINDA'S FAULT. BUT WHO'S THERE? DEJON, NOT DEMARKEE.

ANOTHER THING, ALL THESE -- REMEMBER DEMARKEE COMING IN HERE -- (MR. WEISKOPF MOVES BOARD) BUSTING UP THE COURT. SORRY.

THE COURT: OKAY.

MR. WEISKOPF: AND SITTING RIGHT HERE. AS HE WALKED UP, HE SAT THERE. I ASK YOU, WAS HE NOT THE MOST -- THE SHORTEST PERSON WE SAW IN THE COURSE OF THE WHOLE TRIAL? THE ASSAILANT WAS DESCRIBED AS BEING TALL.

THEN SOME OTHER -- THERE'S SOME GOOD POINTS THAT WERE ASKED BY MR. WALDRON. ONE WAS IF I JUST -- I'LL REPHRASE IT, BUT MR. WALDRON'S BASICALLY SAYING IF I JUST CAME FROM A SHOOTING AND I CAME THROUGH THE BACK DOOR, AND THESE PEOPLE HAD SEEN ME WITH THIS HOLSTER PREVIOUSLY -- WHICH I PROBABLY COULDN'T EVEN PUT ON RIGHT -- AND THE GUN HERE, WOULDN'T THEY HAVE NOTICED THAT? THERE WAS NO TESTIMONY EXCEPT ANTOINETTE SAID SHE MIGHT HAVE SEEN THE HOLSTER THAT NIGHT. SHE WASN'T SURE. SHE'D SEEN IT ON HIM A LOT OF TIMES, BUT THAT SHE DIDN'T REMEMBER SEEING IT THAT NIGHT. AND IT'S A GOOD QUESTION HE ASKS, WHY DIDN'T THEY SEE IT. YOU REMEMBER THEY ALSO DIDN'T SEE THE JACKET.

AND YOU REMEMBER, WHEN HE CAME IN HE SAID NOT THAT I FOUND MARK, NOT THAT I SHOT MARK. HE SAID I WRECKED THE CAR, THE CAR THAT HE USED TO GET BACK FROM THERE.

SO WHAT DO YOU SUPPOSE MR. WALDRON DID, KNOWING THAT THE POLICE ARE ALL AROUND? IN THAT HALF A BLOCK OR WHATEVER IT IS, HE'S WHIPPING OFF HIS JACKET WITH WHICH HE CAN BE IDENTIFIED, HE'S TAKING OFF HIS HOLSTER, HE'S BUNDLING IT UP, AND HE'S STASHING IT BEFORE HE GOES IN. AND DEMARKEE -- AND

HE SAYS NOTHING ABOUT BEING INVOLVED IN A SHOOTING TO HIS FRIENDS. AND THEY SAY --

MR. WALDRON: OBJECTION, YOUR HONOR. THAT'S NOT IN EVIDENCE.

THE COURT: SUSTAINED.

MR. WEISKOPF: I THINK, YOUR HONOR, IT IS A EXPLANATION FOR THE ABSENCE OF THE GUN.

THE COURT: I THINK IT IS EXPLANATION FOR THE ABSENCE OF THE GUN. I THINK YOU CARRIED IT SOMEWHAT FURTHER THAN NECESSARY BY DEMONSTRATING WHAT YOU THINK OCCURRED.

MR. WEISKOPF: ALL RIGHT.

THE COURT: I THINK YOU CAN ARGUE THAT --

MR. WEISKOPF: AND I'M NOT SAYING THAT I THINK IT OCCURRED.

THE COURT: OKAY. BUT -- BUT THE DEMONSTRATION CARRIED IT FURTHER. SUSTAIN THE OBJECTION.

MR. WEISKOPF: WELL TAKEN.

BUT THAT'S THE -- THE POINT. HE KNOWS POLICE ARE GOING TO BE AROUND, THERE'S BEEN A WRECK. HE KNOWS THAT HE CAN'T BE FOUND WITH THE EVIDENCE OF THE OFFENSE. AND HE EVEN GOES INTO HIS TRUSTED FRIENDS FOR HELP AND DOESN'T SAY HELP ME, I'VE BEEN INVOLVED IN A SHOOTING. HE SAYS: HELP, I'VE WRECKED A CAR.

AND HE ASKS, HOW CAN YOU BELIEVE THAT THE FRIEND WOULD NOT -- WOULD LATER COME TO HELP HIM WHEN HE SAID: HEY, I

1 (RECESS TAKEN)

2 (PROCEEDINGS HELD OUT OF THE JURY'S PRESENCE.)

3 **THE COURT:** ALL RIGHT. I'VE HAD A REQUEST FROM THE
4 JURY. THEY WANT THE STATEMENT FROM MARK ANTHONY JONES; THEY
5 WANT BOTH STATEMENTS FROM DEE JIMERSON; THEY WOULD LIKE THE
6 STATEMENT FROM WILLIAM COLEMAN; AND THEY WANT THE STATEMENT
7 FROM JIMMY VALDEZ.

8 **MR. WEISKOPF:** WELL, THE PROBLEM IS THAT THE ONLY
9 ONE THAT WAS ADMITTED WAS THE ONE FROM WILLIAM COLEMAN.

10 **THE COURT:** THAT'S MY UNDERSTANDING. THAT'S IN THE
11 EVIDENCE PACKET?

12 **MR. WEISKOPF:** YES.

13 **MR. LAKER:** YES. THE ONES THAT WERE ADMITTED, I
14 DON'T -- I DON'T THINK YOU CAN GIVE THEM ANYTHING THAT WASN'T
15 ADMITTED.

16 **MR. WEISKOPF:** RIGHT.

17 **THE COURT:** I AGREE. THAT'S WHY I WANTED TO MAKE
18 THE RECORD OF IT.

19 **MR. LAKER:** I THINK THEY -- I THINK THEY HAVE
20 TO REMEMBER -- TRY TO REMEMBER WHAT THEY SAID.

21 **MR. WEISKOPF:** RIGHT.

22 **THE COURT:** OKAY. SO MY -- MY WRITTEN RESPONSE BACK
23 TO THEM -- I WANT CONSENSUS ON THE WRITING -- IS THAT THE
24 ONLY STATEMENT -- AND WOULD YOU CHECK YOUR RECORD? I THINK
25 THE ONLY ONE WAS THE STATEMENT FROM MR. COLEMAN THAT WAS

1 **THE COURT:** OKAY. ALL RIGHT. WELL, I JUST WANTED
2 EVERYBODY'S AGREEMENT THAT I WILL ANSWER ACCORDINGLY.

3 **MR. LAKER:** DOES EVERYBODY AGREE WITH ME ON THAT?

4 **MR. WALDRON:** WAIT -- MR. LAKER?

5 **THE COURT:** YES. YEAH. MR. WALDRON AGREES WITH
6 YOU.

7 MR. WEISKOPF?

8 **MR. WEISKOPF:** I DO.

9 **THE COURT:** ALL RIGHT. IT'S UNANIMOUS. YOU'LL
10 TRUST US --

11 **MR. LAKER:** ALL RIGHT.

12 **THE COURT:** ALL RIGHT. THANK YOU.

13 **MR. LAKER:** I'LL STILL STAY HERE.

14 **THE COURT:** OKAY. WE'LL CALL YOU WHEN WE HAVE MORE.
15 OKAY. THANK YOU.

16 ALL RIGHT. GOT YOUR TYPER READY? ALL RIGHT.

17 CAN WE GET THE COURTROOM TESTIMONY OF ANTOINETTE --
18 OKAY, JUDGE'S RESPONSE, NUMBER TWO, OR WHATEVER WE ARE.
19 ANSWER IS: NO -- MR. WALDRON CAN REMAIN HERE LONG ENOUGH TO
20 HEAR US TYPE THIS SO IT'S CONSISTENT WITH WHAT HE
21 UNDERSTANDS.

22 **THE CLERK:** OKAY. THE ANSWER IS NO.

23 **THE COURT:** THE ANSWER IS NO.

24 NOW, ONCE AGAIN, YOU ARE TO RELY -- THE JURY IS TO RELY
25 UPON THEIR MEMORY AND THEIR NOTES. IN ADDITION, AS A

1 **MR. WALDRON:** YES.

2 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN OF THE
3 JURY, RATHER THAN ASK YOU IN EACH INDIVIDUAL VERDICT -- WELL,
4 I THINK I DO HAVE TO ASK THEM IN EACH INDIVIDUAL VERDICT. AS
5 I CALL YOUR NAME, I WILL ASK YOU IF THIS IS IN FACT YOUR
6 DECISION IN THIS PARTICULAR SITUATION.

7 IN REGARDS TO THE AGGRAVATED ROBBERY ON WILLIAM COLEMAN,
8 MS. JONES, WAS THAT YOUR VERDICT?

9 **MS. JONES:** YES.

10 **THE COURT:** MR. VILLARRUEL, WAS THAT YOUR VERDICT?

11 **MR. VILLARRUEL:** YES.

12 **THE COURT:** MR. BOWMAN -- BOWEN, WAS THAT YOUR
13 VERDICT?

14 **MR. BOWEN:** YES.

15 **THE COURT:** MR. HILLSTEAD, WAS THAT YOUR VERDICT?

16 **MR. HILLSTEAD:** YES.

17 **THE COURT:** MS. BROOKS, WAS THAT YOUR VERDICT?

18 **MS. BROOKS:** YES.

19 **THE COURT:** MR. HIPWELL, WAS THAT YOUR VERDICT?

20 **MR. HIPWELL:** YES.

21 **THE COURT:** MS. ECKHARDT, WAS THAT YOUR VERDICT?

22 **MS. ECKHARDT:** YES.

23 **THE COURT:** MR. JONES, WAS THAT YOUR VERDICT?

24 **MR. JONES:** YES.

25 **THE COURT:** IN REGARDS TO THE AGGRAVATED ROBBERY ON

1 MARK ANTHONY JONES, MS. JONES, WAS THAT YOUR VERDICT?

2 MS. JONES: YES.

3 THE COURT: MR. VILLARRUEL, WAS THAT YOUR VERDICT?

4 MR. VILLARRUEL: YES.

5 THE COURT: MR. BOWEN, WAS THAT YOUR VERDICT?

6 MR. BOWEN: YES.

7 THE COURT: MR. HILLSTEAD, WAS THAT YOUR VERDICT?

8 MR. HILLSTEAD: YES.

9 THE COURT: MS. BROOKS, WAS THAT YOUR VERDICT?

10 MS. BROOKS: YES.

11 THE COURT: MR. HIPWELL, WAS THAT YOUR VERDICT?

12 MR. HIPWELL: YES.

13 THE COURT: MS. ECKHARDT, WAS THAT YOUR VERDICT?

14 MS. ECKHARDT: YES.

15 THE COURT: MR. JONES, WAS THAT YOUR VERDICT?

16 MR. JONES: YES.

17 THE COURT: IN REGARDS TO THE AGGRAVATED ASSAULT ON
18 JIMMY VALDEZ, MS. JONES, WAS THAT YOUR VERDICT?

19 MS. JONES: YES.

20 THE COURT: MR. VILLARRUEL, WAS THAT YOUR VERDICT?

21 MR. VILLARRUEL: YES.

22 THE COURT: MR. BOWEN, WAS THAT YOUR VERDICT?

23 MR. BOWEN: YES.

24 THE COURT: MR. HILLSTEAD, WAS THAT YOUR VERDICT?

25 MR. HILLSTEAD: YES.

1 THE COURT: MS. BROOKS, WAS THAT YOUR VERDICT?
2 MS. BROOKS: YES.
3 THE COURT: MR. HIPWELL, WAS THAT YOUR VERDICT?
4 MR. HIPWELL: YES.
5 THE COURT: MS. ECKHARDT, WAS THAT YOUR VERDICT?
6 MS. ECKHARDT: YES.
7 THE COURT: AND MR. JONES, WAS THAT YOUR VERDICT?
8 MR. JONES: YES.
9 THE COURT: IN REGARDS TO THE AGGRAVATED ASSAULT, A
10 SECOND DEGREE FELONY ON JIMMY VALDEZ, MS. JONES, WAS THAT
11 YOUR VERDICT?
12 MS. JONES: YES.
13 THE COURT: MR. VILLARRUEL, WAS THAT YOUR VERDICT?
14 MR. VILLARRUEL: YES.
15 THE COURT: MR. BOWEN, WAS THAT YOUR VERDICT?
16 MR. BOWEN: YES.
17 THE COURT: MR. HILLSTEAD, WAS THAT YOUR VERDICT?
18 MR. HILLSTEAD: YES.
19 THE COURT: MS. BROOKS, WAS THAT YOUR VERDICT?
20 MS. BROOKS: YES.
21 THE COURT: MR. HIPWELL, WAS THAT YOUR VERDICT?
22 MS. BROOKS: YES.
23 THE COURT: AND MS. ECKHARDT, WAS THAT YOUR VERDICT?
24 MS. ECKHARDT: YES.
25 THE COURT: AND MR. JONES, WAS THAT YOUR VERDICT?

1 MR. JONES: YES.

2 THE COURT: AND IN REGARDS TO THE AGGRAVATED
3 BURGLARY, A FIRST DEGREE FELONY, MS. JONES, WAS THAT YOUR
4 VERDICT?

5 MS. JONES: YES.

6 THE COURT: MR. VILLARRUEL, WAS THAT YOUR VERDICT?

7 MR. VILLARRUEL: YES.

8 THE COURT: MR. BOWEN, WAS THAT YOUR VERDICT?

9 MR. BOWEN: YES.

10 THE COURT: MR. HILLSTEAD, WAS THAT YOUR VERDICT?

11 MR. HILLSTEAD: YES.

12 THE COURT: MS. BROOKS, WAS THAT YOUR VERDICT?

13 MS. BROOKS: YES.

14 THE COURT: MR. HIPWELL, WAS THAT YOUR VERDICT?

15 MR. HIPWELL: YES.

16 THE COURT: MS. ECKHARDT, WAS THAT YOUR VERDICT?

17 MS. ECKHARDT: YES.

18 THE COURT: AND MR. JONES, WAS THAT YOUR VERDICT?

19 MR. JONES: YES.

20 THE COURT: IN REGARDS TO TAMPERING WITH EVIDENCE, A
21 SECOND DEGREE FELONY, MS. JONES, WAS THAT YOUR VERDICT?

22 MS. JONES: YES.

23 THE COURT: MR. VILLARRUEL, WAS THAT YOUR VERDICT?

24 MR. VILLARRUEL: YES.

25 THE COURT: MR. BOWEN, WAS THAT YOUR VERDICT?

1 MR. BOWEN: YES.

2 THE COURT: MR. HILLSTEAD, WAS THAT YOUR VERDICT?

3 MR. HILLSTEAD: YES.

4 THE COURT: MS. BROOKS, WAS THAT YOUR VERDICT?

5 MS. BROOKS: YES.

6 THE COURT: MR. HIPWELL, WAS THAT YOUR VERDICT?

7 MR. HIPWELL: YES.

8 THE COURT: MS. ECKHARDT, WAS THAT YOUR VERDICT?

9 MS. ECKHARDT: YES.

10 THE COURT: MR. JONES, WAS THAT YOUR VERDICT?

11 MR. JONES: YES.

12 THE COURT: ALL RIGHT. IN REGARDS TO THE
13 ENHANCEMENTS, AND I BELIEVE IN ALL FOUR INSTANCES YOU ALL
14 FOUND THAT THERE WAS A GUN THAT WAS USED OR FIREARM THAT WAS
15 USED.

16 IN THE AGGRAVATED ROBBERY ON WILLIAM COLEMAN, THE GUN
17 ENHANCEMENT, MS. JONES, WAS THAT YOUR VERDICT?

18 MS. JONES: YES.

19 THE COURT: MR. VILLARRUEL?

20 MR. VILLARRUEL: YES.

21 THE COURT: MR. BOWEN?

22 MR. BOWEN: YES.

23 THE COURT: MR. HILLSTEAD?

24 MR. HILLSTEAD: YES.

25 THE COURT: MS. BROOKS?

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MS. BROOKS: YES.

THE COURT: MR. HIPWELL?

MR. HIPWELL: YES.

THE COURT: MS. ECKHARDT?

MS. ECKHARDT: YES.

THE COURT: AND MR. JONES?

MR. JONES: YES.

THE COURT: IN REGARDS TO THE ENHANCEMENT ON THE
AGGRAVATED ROBBERY INVOLVING MARK ANTHONY JONES, MS. JONES,
WAS THAT YOUR VERDICT?

MS. JONES: YES.

THE COURT: MR. VILLARRUEL, WAS THAT YOUR VERDICT?

MR. VILLARRUEL: YES.

THE COURT: MR. BOWEN, WAS THAT YOUR VERDICT?

MR. BOWEN: YES.

THE COURT: MR. HILLSTEAD, WAS THAT YOUR VERDICT?

MR. HILLSTEAD: YES.

THE COURT: MS. BROOKS, WAS THAT YOUR VERDICT?

MS. BROOKS: YES.

THE COURT: MR. HIPWELL, WAS THAT YOUR VERDICT?

MR. HIPWELL: YES.

THE COURT: MS. ECKHARDT, WAS THAT YOUR VERDICT?

MS. ECKHARDT: YES.

THE COURT: AND MR. JONES, WAS THAT YOUR VERDICT?

MR. JONES: YES.

1 **THE COURT:** IN REGARDS TO THE AGGRAVATED ROBBERY
2 INVOLVING JIMMY VALDEZ, MS. JONES, WAS THAT YOUR VERDICT?

3 **MS. JONES:** YES.

4 **THE COURT:** AND MR. VILLARRUEL, WAS THAT YOUR
5 VERDICT?

6 **MR. VILLARRUEL:** YES.

7 **THE COURT:** MR. BOWEN?

8 **MR. BOWEN:** YES.

9 **THE COURT:** MR. HILLSTEAD?

10 **MR. HILLSTEAD:** YES.

11 **THE COURT:** MS. BROOKS?

12 **MS. BROOKS:** YES.

13 **THE COURT:** MR. HIPWELL?

14 **MR. HIPWELL:** YES.

15 **THE COURT:** MS. ECKHARDT, WAS THAT YOUR VERDICT?

16 **MS. ECKHARDT:** YES.

17 **THE COURT:** AND FINALLY, MR. JONES, WAS THAT YOUR
18 VERDICT?

19 **MR. JONES:** YES.

20 **THE COURT:** AND LASTLY IN REGARDS TO THE GUN
21 ENHANCEMENT ON THE AGGRAVATED BURGLARY, MS. JONES, WAS THAT
22 YOUR VERDICT?

23 **MS. JONES:** YES.

24 **THE COURT:** MR. VILLARRUEL, WAS THAT YOUR VERDICT?

25 **MR. VILLARRUEL:** YES.

1 **THE COURT:** MR. BOWEN, WAS THAT YOUR VERDICT?

2 **MR. BOWEN:** YES.

3 **THE COURT:** MR. HILLSTEAD, WAS THAT YOUR VERDICT?

4 **MR. HILLSTEAD:** YES.

5 **THE COURT:** MS. BROOKS, WAS THAT YOUR VERDICT?

6 **MS. BROOKS:** YES.

7 **THE COURT:** MR. HIPWELL, WAS THAT YOUR VERDICT?

8 **MR. HIPWELL:** YES.

9 **THE COURT:** MS. ECKHARDT, WAS THAT YOUR VERDICT?

10 **MS. ECKHARDT:** YES.

11 **THE COURT:** AND, FINALLY, MR. JONES, WAS THAT YOUR
12 VERDICT?

13 **MR. JONES:** YES.

14 **THE COURT:** ALL RIGHT. VERY WELL.

15 LADIES AND GENTLEMEN, THANK YOU VERY MUCH. YOU'VE BEEN
16 AN EXCELLENT JURY. YOU'VE DONE A FINE JOB. YOU'VE BEEN
17 CONSCIENTIOUS, YOU'VE PAID ATTENTION. YOU CAN BE PROUD OF
18 THE CIVIC DUTY THAT YOU HAVE DONE. WE ARE DEEPLY
19 APPRECIATIVE OF YOUR WILLINGNESS TO COME HERE AND SERVE.

20 YOU ARE WELCOME TO REMAIN. I KNOW IT'S BEEN A LONG
21 THREE DAYS. YOU ARE EXCUSED WITH MY HEARTFELT THANKS. IF
22 YOU WANT TO REMAIN AND SEE WHAT HAPPENS, THAT'S FINE, BUT AT
23 THIS POINT YOU'VE DONE YOUR JOB AND YOU'VE DONE IT WELL AND
24 YOU ARE EXCUSED WITH MY THANKS AND YOU'RE FREE TO LEAVE.

25 IT'S NOT DARK OUT THERE, BUT IF YOU NEED ESCORTS TO YOUR

1 EPISODE THAT IT SHOULD ALL RUN CONCURRENT. ADMITTEDLY, THERE
2 IS THE GUN ENHANCEMENT AND THAT NEEDS TO BE ADDRESSED.

3 I REALLY DON'T KNOW WHAT TO SAY ABOUT THAT, YOUR HONOR,
4 BUT I WOULD -- IT SEEMS TO ME THAT IT WOULD MAKE SENSE IN
5 THIS PARTICULAR CASE THAT EVERYTHING RUN CONCURRENT -- THAT
6 THE CHARGES ALL RUN CONCURRENT WITH ONE ANOTHER.

7 **THE COURT:** ALL RIGHT. COURT'S PREPARED TO
8 SENTENCE.

9 MR. WALDRON, I VIEW THIS A LITTLE BIT DIFFERENTLY THAN
10 BOTH OF YOU. FIRST OF ALL, MR. WALDRON, YOU ARE BRIGHT, YOU
11 ARE ARTICULATE. YOU ARE ALSO VIOLENT, AND I DON'T UNDERSTAND
12 THAT. THERE'S NO QUESTION IN MY MIND THAT THE JURY'S VERDICT
13 WAS CORRECT IN THIS PARTICULAR SITUATION. I DO BELIEVE THAT
14 THE CHARGES SHOULD BE STACKED, BUT I STACK THEM A LITTLE BIT
15 DIFFERENTLY BECAUSE OF THE WAY I ANALYZE IT.

16 IN REGARDS TO THE FOUR LIFE SENTENCES, THE FOUR 5 YEARS
17 TO LIFE SENTENCES, AND THE 1 TO 15 YEARS FOR THE AGGRAVATED
18 ASSAULT ON -- ON MR. VALDEZ, ALL THOSE OCCURRED IN A SINGLE
19 CRIMINAL EPISODE. ALL OF THOSE OCCURRED IN ONE EPISODIC
20 SITUATION WITHIN MOMENTS OF ONE ANOTHER. I THINK THAT ALL OF
21 THOSE CHARGES SHOULD RUN CONCURRENTLY.

22 THE DECISION THAT YOU MADE LATER IN THE EVENING TO HIDE
23 THE WEAPON WAS SUFFICIENTLY BROKEN IN TIME AND IN SCOPE AND
24 EVERYTHING ELSE THAT I'M OF THE OPINION THAT THAT SENTENCE
25 SHOULD RUN CONSECUTIVE TO THE OTHERS. YOU HAD AN

1 OPPORTUNITY, IT WAS NOT NECESSARY THAT YOU HIDE THE GUN AND
2 THAT YOU TAKE WHATEVER STEPS IT WAS TO PREVENT YOUR BEING
3 CAPTURED OR WHATEVER, AND THERE IS A SIGNIFICANT BREAK IN
4 TIME, IN MY OPINION, THAT THOSE SHOULD RUN CONSECUTIVE. SO
5 THE WAY I STACK THESE CHARGES YOU'RE LOOKING AT BOTTOM LINE 7
6 YEARS TO LIFE.

7 SO IT'S GOING TO BE THE ORDER AND SENTENCE OF THE COURT
8 ON THE FIRST DEGREE FELONIES THAT YOU'RE TO SERVE AN
9 INDETERMINATE TERM OF 6 YEARS TO LIFE AT THE UTAH STATE
10 PRISON ON EACH OF THOSE FOUR COUNTS. THAT INCLUDES THE
11 MANDATORY 1 YEAR GUN ENHANCEMENT THAT I'M REQUIRED TO IMPOSE.

12 IN ADDITION TO THAT, FOR THE SECOND DEGREE AGGRAVATED
13 ASSAULT ON MR. VALDEZ, IT WILL BE THE ORDER AND SENTENCE OF
14 THE COURT THAT YOU'RE TO SERVE AN INDETERMINATE TERM OF 1 TO
15 15 YEARS AT THE UTAH STATE PRISON. I WILL RUN ALL FIVE OF
16 THOSE CHARGES CONCURRENT WITH ONE ANOTHER.

17 IN REGARDS TO THE TAMPERING WITH THE EVIDENCE, OR YOUR
18 ATTEMPT TO LATER HIDE THE WEAPON THAT WAS USED IN THAT
19 ASSAULTIVE BEHAVIOR, IT WILL BE THE ORDER AND SENTENCE OF THE
20 COURT THAT YOU'RE TO SERVE AN INDETERMINATE TERM OF 1 TO 15
21 YEARS AT THE UTAH STATE PRISON. AND I AM OF THE OPINION THAT
22 THE AGGRAVATING CIRCUMSTANCES ARE SUCH THAT THAT SHOULD RUN
23 CONSECUTIVE.

24 MY RECOMMENDATION TO THE BOARD OF PARDONS AND TO THE
25 BOARD OF PAROLE IS THAT YOU DO AN INDETERMINATE TERM OF 7